Becoming an Effective Watchdog

A Necessary Primer for California School Construction Bond Oversight

2023

By Bryan Scott

Pre-Publication
Review Copy

Version 9

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2022, 2023

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Cover Photograph: The cover picture is of the Byron Hot Springs District School, believed to have been taken in the early 1890's. The school was located on John Samuel Armstrong's ranch in eastern Contra Costa County, where the Byron Airport is located today, about three miles south of the Town of Byron. While there are no names to associate with the 22-member student body and staff, the man wearing a suit standing to the left is John Samuel Armstrong. Cover Photo is courtesy of the East Contra Costa Historical Society - (eastcontracostahistory.org) All other photographs are by the Author.

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Acknowledgements

Becoming an Effective Watchdog is the first task-based resource designed and written for the November, 2000, Proposition 39 "School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements. Initiative Constitutional Amendment and Statute." Citizens' Bond Oversight Committee (CBOC) field. It brings together the thoughts and experiences of many volunteers who have worked extensively in this young discipline, and fulfills the mandatory requirement for necessary technical assistance described in Education Code Sec. 15280 (a)(1).

Special thanks goes-out to two pioneers in the field, Jack Weir and Nick Marinovich. Each contributed extensively of their time, sharing parts of their lengthy practical experience with me, helping me to begin to grasp this multidisciplinary subject. Those committee members that toil in the trenches of the many committees I've been able to watch, listen to, and read about, also deserve my gratitude.

Great appreciation also goes-out to three successful non-oversight industry professionals who reviewed this work at its early stages: author and college lecturer Carol Jensen, ballot initiative attorney Barry Fadem, and software industry executive Jim Daviner. Special thanks goes-out to Anton Jungherr and Tom Rubin, leaders of the California Association of Bond Oversight Committees (CABOC), for their editing efforts. Each pointed out many, many flaws in my work, some of which have been corrected in this edition. Each has been lavish with encouragement at times, once even going so far as pointing out an early draft's perfect page. All remaining errors herein are mine and mine alone, and I hope to correct them in future editions.

Lastly, I'd like to thank Javed (JD) Khan and Brentwood Union School District Superintendent Dana Eaton for participating in the Measure-B CBOC, allowing me to experience an oversight committee member's first term in office.

Everyone who spends time with ***Becoming an Effective Watchdog*** is encouraged to form an opinion on the work, and share that opinion with me. There are topics that need to be included, and facts that are missing. Please let me know what they are. Scott.Bryan@comcast.net or becominganeffectivewatchdog@gmail.com .

The Lincoln Elementary School is the state's oldest (1872) continually operating one-room schoolhouse.

Preface

In today's massively polarized world, where global communication is as easy as a few clicks on a smart phone, distrust of government and government programs is at an all-time high.

National political and judicial events, public health mask protocols, and vaccine mandates that seem to come and go, have all elevated the Public's distrust of government.

Elected official recalls, attacks on election integrity, and the lack of government program transparency each seem to be more common today than at any time in our nation's history.

The U.S. Securities and Exchange Commission recently levied a $100 million fine on one of the world's largest auditing firms for cheating on CPA-licensing exams, and for withholding evidence from the SEC's Enforcement Division.

The Alameda County civil grand jury recently published findings that the work of the Bay Area Rapid Transit's (BART) independent oversight function, the Office of the Inspector General (OIG), has been blocked by BART senior management, the BART Board of Directors, and union leadership officials. And the Inspector General resigned.

In just one of California's 58 counties an elected District Attorney took a plea deal and resigned from office. The same county's elected elections chief, the Clerk-Recorder, plead guilty to five felony perjury charges and four misdemeanor charges of grand theft, and also resigned from office.

The District Attorney paid over $45,000 in fines while the Clerk-Recorder paid fines of over $150,000. The disgraced government officials received a combination of jail time, community service, probation, and fines.

Trust in the three branches of the federal government is at a 43% average, according to the global opinion research company Gallop Inc., and their Governance Survey, conducted in September,

2022. This average level of trust is the lowest level since the same level was marked in 2015. Gallop has conducted this survey since 1972.

State and local government received higher opinions of trust than the federal government, but still below their historical averages. The survey recorded levels of trust of 57% and 67% for state and local governments, respectively.

Oversight of government is a critical necessity in today's complex world.

This Necessary Primer includes:

> **Task One,** which provides a general understanding of why Citizens' Bond Oversight Committees (CBOCs) exist, their purpose and context, and conveys how the committee operates along with the duties of the committee and committee members. The Section touches on the definitions of fraud, waste and abuse, as well as a description of oversight resources and organizations;
>
> **Task Two,** which describes where fraud, waste and abuse might exist, identifying documents which are typically used in school construction projects. This section explains how to seek information by asking questions, and shows common methods used by school administrators to not respond to questions. Presented are the limits on bond-funded construction projects, and a projects (portfolio) management technique;
>
> **Task Three,** which describes a model of decision making, with historical examples, and tells of an entity that exists to promote California school construction. This section summarizes the California budget portions dedicated to education, and the education sector's cycle of money. It also provides an example of oversight in state highway construction that illustrates the need for oversight;
>
> **Task Four,** which identifies the purpose and limits of oversight, along with the typical information format and organization methods. It describes techniques used to investigate, as well as 20 oversight inquiry subject-areas and refers to 75 school construction program questions, touching on the statutory limits of Proposition 39 construction projects;
>
> **Task Five,** which lists the mandated "shall-do's" of the **Strict Accountability Act in Local School Construction Bonds Act of 2000**, and describes the required annual report with examples of report contents. This section touches on the CBOC's legal status, as well as the elected board's responsibility. It describes the mandated financial and performance audits, and the legally-required standards. It explains why and when a periodic report might be appropriate, how to publish information to the Public, and includes an investigation/publication communication process. It describes laws that might be violated by school and construction managers, and mentions government agencies with oversight responsibility;

Task Six, which describes the context of oversight and actions that might limit oversight, explains how to construct an effective public information campaign, presents one successful format, and how to get the word out to the Public. It also describes judicial alternatives available within the enabling legislation; and

An In-depth section, which makes a focused examination of "The Strict Accountability in Local School Construction Bonds Act of 2000," covering a) the three major articles, b) the context of its passage, c) the California Legislature's intent of "vigorous" oversight, d) the Act's "shall-do" instructions to oversight committees, and e) a judicial remedy available to members of oversight committees as well as the Public.

This Necessary Primer includes task-focused sections, an Introduction and an Appendix, which all focus on the most important aspects of Proposition 39 local school construction oversight. The Appendix includes essential source documents.

Becoming an Effective Watchdog provides an aspirational orientation to oversight in local school bond-funded construction programs. It is not legal advice, nor is it a recitation of how most CBOCs operate today. Its goal is to generate increased citizen participation in local government, as well as to improve compliance with Proposition-39 oversight requirements.

The benefits of this Necessary Primer are varied, according to the role of the reader.

Benefits for District Administration (Superintendents, Chief Business Officers):

The CBOC performs as specified in the Constitution and state laws (Education Code, Government Code), so that District Administration spends less time getting new committee members oriented, and spends less time answering questions or providing technical assistance;

There is diminished likelihood of bond oversight irregularities occurring or being reported to the Board or the Public, and when an irregularity occurs it is addressed quicker, requiring less Administration time, producing benefits of change quicker, and reducing any damages;

There is diminished likelihood of allegations of the omission of material facts, or other wrong-doing that might be reportable to administrative agencies like the Securities Exchange Commission, and evidence of positive action taken can be demonstrated;

CBOC member retention will be improved and turnover reduced because of greater satisfaction with oversight committee member activities.

Benefits for CBOC Chair/Vice Chair:

New and experienced committee members receive a comprehensive understanding of the CBOC purpose, role, history, and actions (both required and potential), so that everyone understands mandated and discretionary activities, and so that activities are accomplished efficiently;

New CBOC members are brought on-board and up-to-speed more quickly, so that mandated actions are accomplished efficiently; Committee member retention will be improved and turnover reduced because of greater satisfaction with activities and accomplishments.

Benefits for CBOC members:

New and experienced committee members will develop a comprehensive understanding of the purpose, role, and history of bond oversight committee actions (both required and potential), so that members understand mandated and discretionary activities. As a result, members gain a greater satisfaction from activities and accomplishments.

Benefits for School District legislative bodies:

Members of the School Board, Board of Trustee, or Board of Education will develop a comprehensive understanding of the purpose, role, and history of bond oversight committee actions (both required and potential), so that elected members understand these activities, and so that legislative and ministerial duties are accomplished efficiently.

The first Secretary of Treasury, Alexander Hamilton. After serving as George Washington's Aide during the Revolutionary War, he served in the New York legislature, helped draft the Constitution and worked on the ratification process.

An Introduction, including *Alexander Hamilton's "Letter of Instructions"*

In 1978 California voters passed a citizen-initiated measure that dramatically changed government funding in the state. That year's Proposition 13, officially called "The People's Initiative to Limit Property Taxation," rolled back some property tax assessments, put limits on tax increases and required the approval of the voters for new or increases to existing taxes. The proposition was a reaction to a continual increase in the tax burden on California property owners.

This event disrupted the existing system of new school financing by increasing to two-thirds the votes required to approve a school bond measure. It had a negative impact on the amount of money borrowed in the form of bonds, and the resulting school construction occurring throughout California gradually decreased, in actual dollars and in the percentage of ballot measures that passed.

Stated another way, those businesses that facilitated bond programs, and those that designed and built school facilities throughout the state, saw a decrease in revenues dedicated to their business sector.

The percentage of bond measures passed during the 1990's decreased. The two-thirds passage threshold established by Proposition 13 was doing what it was intended to do, limit the increase

in property tax levied on property owners. School districts, though, were having trouble building new school facilities as the state's population grew. Plus, facilities constructed during California's post-war expansion period, the 1950's and 1960's, were approaching the end of their useful life.

In order to reverse these trends education and industry leaders created a cycle that would provide new and updated school facilities for California students, along with increased funds flowing into the bond/financial services sector and the school construction industry.

The bond and construction industries, through their lobbyists, approached California Legislators and proposed putting another ballot initiative before the voters. This one would modify the California Constitution and enact a law to reduce the voter-approval threshold to just 55%, thereby increasing the percentage and dollar amount of school construction bond measures that passed.

California students, it was believed, would benefit from new and remodeled facilities, and the bond and construction industries would benefit from increased levels of business in their respective sectors, and lastly, educators would work in better facilities. All of these benefits are dependent on property tax payers shouldering the costs.

In order for the new proposition to pass in November, 2000, certain accountability elements were added and promoted with the voters. Any bond proceeds would be used only for facility construction work, and not for any instructional or administrator salaries, or other parts of a school district's operating expenses. The money would be spent only on new or remodeled buildings, furnishings and equipment, the ballot measure said, and a list of projects would have to be submitted to the voters at the same time as they were asked to vote, so that the Public would know what their money would be spent on.

When the dust settled and the votes were counted, Proposition 39, officially titled the "School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements. Initiative Constitutional Amendment and Statute," passed by a 53.31% to 46.69% margin, 5,431,152 YES votes to 4,756,311 NO votes. A significant majority of California voters favored the measure.

And the limitations on what the taxpayer-approved bond money could be used for, along with the accountability elements including the function of "a watchdog" overseeing the expenditure of taxpayer funds, were enacted into law. The ballot measure's resulting legislation was the "Strict Accountability in Local School Construction Bonds Act of 2000." (See Appendix F, Page 87 for the Constitution and Appendix C, Page 75 for the "Strict Accountability in Local School Construction Bonds Act of 2000.)

This idea of establishing a law and then putting in place a watchdog entity to assure that the law is followed goes back to the origin of the United States. In the late 1780's and early 1790's the country was struggling to pay debts incurred during the Revolutionary War. To raise funds, the earliest Congress enacted tariffs on goods imported into the country.

One of the earliest acts of Congress, on August 4, 1790, was to establish these tariffs, and then establish a watchdog mechanism at the same time. While most businesses played by the rules and paid their tariffs, the practice of smuggling goods into the country was widespread.

The watchdog mechanism Congress created was the Revenue-Marine, later re-named the U.S. Revenue Cutter Service. Its mission was to enforce tariff laws.

This early attempt to oversee commercial activities provided Congress and the American public with an assurance that the revenue system of the new country was operating as intended. Over time the U.S. Revenue Service grew, and was eventually re-named the U.S. Coast Guard.

The original Revenue-Marine was a de-centralized force, with all colonies and their ports divided into districts, and each district receiving its own maritime inspection resources. Each district reported to the local harbor master, with the intended purpose stated as:

> **"… For the collection of duties imposed by law on goods, wares, and merchandise imported into the United States …"**
> **--Chapter XXXV, 1st Congress Session II, August 4, 1790.**

In June of the following year, 1791, our nation's first Secretary of Treasury, Alexander Hamilton, wrote a "Letter of Instructions" to the officers in command of the ships providing this oversight and watchdog service.

With some adaptation, these instructions are applicable to work done by members of today's CBOCs. These committees are charged with providing the monitoring and watchdog services of their respective school districts, as mandated by the "Strict Accountability in Local School Construction Bonds Act of 2000." The full text of Alexander Hamilton's "Letter of Instructions" can be found at this link: https://media.defense.gov/2017/Jul/02/2001772367/-1/-1/0/HAMILTONLETTER.PDF

With apologies to Alexander Hamilton, what follows is an adaptation of his letter that includes valuable suggestions and encouragement to our era's CBOC members.

Alexander Hamilton's Letter of Instructions to the Commanding Officers of the First Revenue Cutters June 4, 1791, *revised for members of a Citizens' Bond Oversight Committee*

(Original) Treasury Department
June 4th, 1791

Sir (and Madam):

As you are speedily to enter upon the duties of your station it becomes proper briefly to point them out to you. Accordingly, I send you a copy of the Act under which you have been appointed,

and which are contained your powers and the objects to which you are to attend, and I shall add such observations as appears to me requisite to guide you in fulfilling the intent of that act.

It may be observed generally that it will be in a partial manner, the province of a Citizens' Bond Oversight Committees (CBOC) member to guard California laws from all infractions, or breaches, either during the actual construction of school facilities, or the planning and administration thereof.

Hence, it will be necessary for you from time to time to ask questions, seek and review documents, and inspect facilities. To remain silent in meetings, to accept presentations without questioning, would in a great measure defeat the purpose of the establishment. It would confine your vigilance to a single set of facts, and allow full scope to fraudulent practices, everywhere else.

Article 2 of the act herewith transmitted, declares that the COC is to be deemed an independent oversight standing committee of the school district's legislative body, and enumerates certain powers with which it is to be invested. Education Code Section 15278 treating the same powers, that of inquiry and investigation, enters into some details concerning them, including examining the annual Performance and Financial Audits, inspecting completed and underway construction projects, reviewing the school district's cost-savings efforts, including programs to reduce professional fees, reduce site preparation costs, reviewing joint-use programs, facility design efficiencies, and the use of cost-effective and efficient methods of reusable facility plans.

These sections require particular attention as marking the outline of authority and duty, but in the capacity of members of an independent oversight committee you possess some other powers, and are bound to perform some other duties which are not mentioned in those sections. You will have a right for examination, and it will be your duty to inquire and investigate the cases in which there is potential for breaches of California laws, when they come under your notice, but all the power you can exercise will be found in some provisions of the law and it must be a rule with you to exercise none with which you are not clearly invested. In every case of doubt you will follow the advice of independent legal counsel. On points of importance you may correspond with the county District Attorney.

Article 2, Section 15280, and Article 3 of the Act, which relate to the operations of the COC and local school construction bond expenditure accountability, also require your particular attention. The clear observance of the provisions of these sections is considered as of material consequences to the California Legislature and the Public, and ample time having been allowed for them to be generally known and complied with, it is now indispensable that they should be strictly enforced.

I have now noticed to you the principal parts of the law which immediately relate to the execution of your duty. It will, however, be incumbent upon you to make yourself acquainted with all the laws of California which concern school bonds and local school construction, --a knowledge of the whole spirit and tendency of which cannot but be a useful guide to you in your particular sphere.

The California Education Code Article 7, Sections 35230 – 35240 and Article 2, Sections 72530 – 72533 are entitled and describe "Corrupt Practices" for school districts. The California Penal Code - Part 1, Of Crimes and Punishments, Title 6, Of Crimes Against the Legislative Power, Sections 85 – 88, describe the crime of "bribery," and in this same code is Title 7, Of Crimes Against Public Justice, Chapter 4, "Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents," Sections 115 – 115.3.

While I recommend in the strongest terms to members of each COC activity, vigilance and firmness, I feel no less solicitude, that their deportment may be marked with prudence, moderation and good temper. Upon these last qualities, not less that the former, must depend the success, usefulness and consequently continuance of the establishment in which they are included. They cannot be insensible that there are some prepossessions against it, that the charge with which they are intrusted [sic] is a delicate one, and that it is easy by mismanagement, to produce serious and extensive clamour [sic], disgust and alarm.

They will always keep in mind that their countrymen are freemen, and, as such, are impatient of everything that bears the least mark of a domineering spirit. They will, therefore, refrain, with the most guarded circumspection, from whatever has the semblance of haughtiness, rudeness, or insult. If obstacles occur, they will remember that they are under the particular protection of the laws and that they can meet with nothing disagreeable in the execution of their duty which these will not severely reprehend. This reflection, and a regard to the good of the school district, will prevent, at all times a spirit of irritation or resentment. They will endeavor to overcome difficulties, if any are experienced, by a cool and temperate perseverance in their duty--by address and moderation, rather than by vehemence or violence. The former style of conduct will recommend them to the particular approbation of the California Legislature, while the reverse of it--even a single instance of outrage or intemperate or improper treatment of any person with whom they have anything to do, in the course of their duty, will meet with pointed displeasure, and will be attended with correspondent consequences.

The foregoing observations are not dictated by any doubt of the prudence of any of those to whom they are addressed. These have been selected with so careful an attention to character, as to afford the strongest assurance, that their conduct will be that of good oversight committee members and good citizens. But, in an affair so delicate and important, it has been judged most advisable to listen to the suggestions of caution rather than of confidence, and to put all concerned on their guard against those sallies to which even good and prudent men (and women) are occasionally subject. It is not doubted that the instructions will be received as they ought to be, and will have due effect. And that all may be apprized [sic] of what is expected you will communicate this part of your orders, particularly, to all your fellow COC members, and you will inculcate a correspondent disposition.

I am sir (and madam), your obedient servant,

ALEXANDER HAMILTON,

Secretary of the Treasury

Becoming an Effective Watchdog includes information that will help all those serving the oversight and watchdog function envisioned by the California Legislature. This document does not constitute legal advice. It is based on extensive experience in the study of human behavior, local government, and school district bond program oversight. Good luck and best wishes to all who enter into this vocation.

The Lincoln Elementary School in Petaluma, California, is the state's oldest continually operating one-room schoolhouse.

Task One: Show Up! Prepare, attend meetings, and be curious.

Welcome to ***Becoming an Effective Watchdog.*** The first task you must accomplish, as a Citizens' Bond Oversight Committee (CBOC) member, is to "Show Up!" And be prepared as well.

This Necessary Primer is designed to give you the technical knowledge necessary to provide the state-mandated taxpayer oversight of school construction bond programs, those approved by the voters, so that when you "Show Up!" you will have an understanding of what is going on.

Education is a fundamental service that government provides to its citizens. An educated and informed populace has been extolled throughout American history as a key tenant of democracy and our republican form of government. And so, a significant portion of government revenue is dedicated to this essential purpose.

The premise of our country is that government is instituted of the people, by the people, and for the people. Because of this government has a duty to be transparent in all its operations.

When government is conducted in the dark, and adequate levels of disclosure are not made, the Public suffers. Public funds may be used improperly, and the Public good may not be served. Government at all levels share this value, and operate in a manner that invites citizen participation.

This document's basic assumption is that you are a California resident who is concerned about the expenditure of taxpayer funds on local school construction projects, projects that are authorized under the "Strict Accountability in Local School Construction Bonds Act of 2000."

You may be a volunteer participating in a CBOC, an elected member of the school board, or a school district administrator. While this program focuses on the practical aspects of the oversight role, all three of these groups will find this document beneficial.

You may be thinking "What have I gotten myself into?"

Most people volunteer for this activity because they feel the desire to contribute to the community, and because they have children in the public school system. Volunteering in some way just seems to be the right thing to do, setting the right example for the children.

1,100 School Districts

In 2022, according to the California Department of Education, there are 1,037 K-12 school districts in the state. There are an additional 73 community college districts (Grades 13 and 14), bringing the Proposition 39 total number of districts to 1,110.

The majority of these districts take advantage of the lowered threshold for construction bond ballot measure passage resulting from passage of Proposition 39 and the enactment of the "Strict Accountability in Local School Construction Bonds Act of 2000."

This law requires that districts taking advantage of the 55% ballot passage level, instead of the traditional two-thirds requirement, perform activities to improve public visibility and taxpayer oversight.

Few districts follow this law completely, based on a compliance survey with over 200 respondents conducted by the California Association of Bond Oversight Committees (CABOC). Mistakes are made, either by omission or commission.

It is less expensive and easier for school districts to overlook parts of the law, getting audit firms to provide documents that may look nothing like documents based on the full and complete standards as listed in Government Audit Standards issued by the Comptroller General of the United States. This practice results in school districts saving money and avoids close Public scrutiny. Audit firms cooperate and participate in this practice, and get paid.

When school districts fail to comply with the law, the Public is the victim. While the "Strict Accountability in Local School Construction Bonds Act of 2000" promises the Public open transparency and vigorous oversight, the actions of bond-issuing districts and audit firms often deprive the Public of insight into the expenditure significant public funds.

What you are about to read is the compilation of dozens and dozens of oversight committee member conversations, members who oversee the expenditure of hundreds of BILLIONS of dollars of taxpayer funds. Veteran oversight committee members, lawyers, consultants, school district administrators, have all contributed to this work.

Nothing in this document should be construed as legal or professional advice, and the reader is encouraged to seek the services of qualified professionals, should the need arise.

This document is organized around a series of activities or "Tasks" that are essential to serving on an oversight committee. The assumption is that if committee members know what they are

supposed to do, and how to do it, they will be more effective in serving the community, and they will gain a higher level of satisfaction from their efforts.

There is also an "In-depth" chapter which focuses on the foundational document upon which the work of an oversight committee is based, the "Strict Accountability in Local School Construction Bonds Act of 2000."

The Public's Business

It is important to understand that as a CBOC volunteer you are conducting the Public's business. When you attend meetings, there are requirements that the Public be notified a specific period of time in advance, with the meeting's agenda, and given the chance to speak up and participate. These and other requirements are detailed in California's Ralph M. Brown Act, written in the Government Code beginning at Sec. 54950.

Meetings will follow established parliamentary procedures outlined in such books as Roberts Rules of Order and Rosenberg's Rules of Order. If you are unfamiliar with these procedures, do not panic. Just show up to your first meeting and watch how the meeting proceeds. Read the minutes of prior meetings to see how the meetings flow procedurally, and learn the types of activities occurring at meetings. You will quickly get the hang of it.

The CBOC is an independent oversight committee, appointed by law by the elected school board. The responsibility for actions on all aspects of bond measures, from the specification of projects to the awarding of construction projects, to the management of construction, and to the auditing and review of bond fund expenditures, rests ultimately with the elected board and the school district administration. As a member of a CBOC, you work for the Public. You do not work for the school board, or the school district administration, or the teachers and staff where your children might attend classes. You work for the Public, reviewing activities, asking questions, evaluating the work of the school district administration, construction management, and school board, and then reporting your activities, conclusions and findings to the Public.

The CBOC has duties that are detailed in the "Strict Accountability in Local School Construction Bonds Act of 2000," as enacted into California's Education Code in Sections 15264 through 15288.

The law repeatedly states that the CBOC is to "alert," "inform," and "advise" the Public, in Sections 15264 (c), 15278 (b) and 15280 (b), respectively. Nowhere in the law is it stated that the oversight committee is to inform, alert or advise the school district's elected board or administrators.

More details will be presented later in this work. For now, just look the law up in Appendix C and read it once, paying particular attention to the Preamble, Section 15264 of the Education Code:

> ***"It is the intent of the Legislature that all of the following are realized:***
>
> ***"(a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in strict conformity with the law.***
>
> ***"(b) Taxpayers directly participate in the oversight of bond expenditures.***
>
> ***"(c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.***
>
> ***"(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures."***

The California Legislature was serious about this matter. The Legislature recognized that it was of critical importance that the Public have faith that tax money is spent wisely.

When Proposition 39 was passed, distrust of government was rising, and special interests representing the construction industry, the bond industry, and the education industry had embarked on a lobbying campaign asking that the tax approval threshold be lowered from two-thirds to just 55%.

Government Corruption

During the 1990's many prominent government officials were accused and convicted of criminal acts and corruption while in office:

Former Assembly Member and House Speaker Brian Setencich (R-30th Assembly District): Convicted of federal tax evasion, sentenced to seven months detention in a halfway house. (2000)

Former Sen. Paul Carpenter (D-Cypress): Convicted of mail fraud, money laundering and other charges. Sentenced to seven years in prison. (1995)

Former Sen. Frank Hill (R-Whittier): Convicted of extortion, conspiracy and money laundering. Sentenced to 46 months. (1994)

Former Sen. Alan Robbins (D-San Fernando Valley): Convicted of racketeering and tax evasion. Freed after 21 months. (1992)

Former Assemblyman Pat Nolan (R-Glendale): Convicted of racketeering. Sentenced to 33 months. (1993)

Former Sen. Joseph Montoya (D-Whittier): Convicted of racketeering and money laundering. Sentenced to 72 months. (1990)

Former Coastal Commissioner Mark Nathanson: Convicted of felony racketeering. Sentenced to 57 months. (1993)

Former Lobbyist Clayton Jackson: Convicted of racketeering, mail fraud and money laundering. Sentenced to 78 months. (1995)

These criminal proceedings received significant publicity, and every Sacramento politician is sure to have read, and followed, the judicial events of these and other cases in the media.

The Legislature struck a bargain with the special interests. It went something like this: "We will make it easier to pass school construction bonds, but bond financing and school construction projects must perform in a way that gives the Public confidence that the money is spent with no waste, misuse or improper expenditures."

The enacted law states that school districts must appoint an independent CBOC made up of a wide range of citizens, with the categories of committee members set by the legislature. (See Education Code Sec. 15282) And the committee must operate with the same public visibility as the elected school board.

The law states that this CBOC must be independent, and that it must report its activities, findings and conclusions to the Public, at least once each year. The law also says that school districts must pay for technical and administrative assistance for the committee, so they can effectively perform their oversight role.

While serving as a CBOC member there are four absolute job performance requirements. These are characterized by the word "shall" in the enabling law, as in "… the committee ***shall*** …."

1) The committee ***shall*** meet at least once a year, with the Legislature intending that the committee "vigorously" review and report on the expenditure of taxpayers' money for school construction, reviewing professionally prepared Financial and Performance Audits of these expenditures, as well as any other documents it feels are involved in expenditure of the borrowed bond money.

   Being an independent CBOC the committee is free to meet as many times as it wants or feels is necessary, to do its work. It can also make reports to the Public as often as it likes or feels is necessary.

2) The Act says that meetings ***shall*** be open to the Public, and that the Public ***shall*** be given proper notice in advance, just as school board meetings are conducted. The Act says that the Public shall have advance notice of what will be discussed at the meeting, in the meeting's published agenda.
3) The CBOC, having met at least once during the year, ***shall*** tell the Public what it did, what it found, and any conclusions it reached, especially noting the CBOC's opinion on the construction bond program's compliance with Constitutional and legal requirements. This information ***shall*** be reported to the Public at least once a year, and publicized by the school district.
4) And because this is Public business, all documents reviewed and meeting minutes taken ***shall*** be made public, becoming a matter of public record. And these documents are to be posted for the Public on an Internet Web site maintained by the school district.

So, before committee members attend their first meeting, they should read the enabling legislation, and understand that they are part of an independent committee representing the Public, not the school district administration or the elected school board.

Most people agree that providing a school system is an essential function of state government. The hard part is figuring out how to pay for it. Allowing local voters to pass a bond measure to support local school construction seems like a democratic way to allow citizens to pay for their school facilities.

The idea is simple: Local citizens want school facilities, the local school district borrows money from the capital markets to build them, and then constructs or enhances the desired facilities. A "wish list" of facilities is created as part of this process, and bonds are sold (money is borrowed), and then the money is spent (facilities are constructed). Property tax payers re-pay the borrowed money over time, often 30 or 40 years.

This cycle is repeatable, up to and beyond property taxation limits set by the state Legislature. Private companies exist in all of these phases, companies that exist to make money and help the education industry create wish lists, pass bond measures, and spend the voter-approved borrowed money.

Conduct Oversight, Report to the Public

In creating the "Strict Accountability in Local School Construction Bonds Act of 2000" the Legislature created "rules of the road" for this process. With over eleven hundred school districts in California able to take advantage of the lower approval threshold, the Legislature sensed the necessity of a consistent methodology and specified a local oversight function.

So, the CBOC is a critical element of these "rules of the road." The mission of the CBOC is to identify fraud, waste and abuse of public funds. It is to identify instances where money is spent improperly, and not in accordance with "the law." And where a potentially improper action is discovered, the Public and law enforcement agencies are to be notified.

But what is, precisely, fraud, waste and abuse? "Fraud, waste and abuse" is a phrase used frequently during discussions of government oversight and auditing, and is interpreted in many ways.

One federal government Office of Inspector General defines the terms thusly:

> "Fraud is defined as the wrongful or criminal deception intended to result in financial or personal gain. Fraud includes false representation of fact, making false statements, or by concealment of information.
>
> "Waste is defined as the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment (or potential detriment) of the U.S. government. Waste also includes incurring unnecessary costs resulting from inefficient or ineffective practices, systems, or controls.
>
> "Abuse is defined as excessive or improper use of a thing, or to use something in a manner contrary to the natural or legal rules for its use. Abuse can occur in financial or non-financial settings."

By substituting "local school district" for "U.S. government" one gets a useful general description of improper expenditures of school construction funds.

A practical example of government construction program oversight can be observed in California public records. The "Annual Summary of Findings and Recommendations for 2020-2021," published by the California Department of Transportation's Independent Office of Audits and Investigations, Report of the Inspector General, and is available online.

Similar to the CBOCs required in the "Strict Accountability in Local School Construction Bonds Act of 2000," this oversight function and the Independent Office of Audits and Investigations (IOAI), along with the position of Inspector General, were created by the Legislature with a new law, 2017's SB 1, the "Road Repair and Accountability Act."

This oversight body's mission is to ensure that the California Department of Transportation (Caltrans) and external entities that receive state and federal transportation funds are spending those funds in compliance with state and federal laws, and in an efficient, effective and economical manner.

While covering a much broader geographical area, and much larger amount of construction funds than local school projects, the oversight principle is the same. This oversight unit covers infrastructure construction projects throughout California, and nearly $20 Billion of funds.

For a particular year, 2021-2022, the IOAI Investigations Unit undertook to explore 18 new complaints, closed 20 formal investigations, and substantiated 16 complaints. These substantiated complaints were categorized as Incompatible Activities/Conflict of Interest: 11 occurrences; Misuse of Time: 4 occurrences; and one Misuse of Vehicle.

Conceptually, a $100 million local school construction bond program is just as likely to experience fraud, waste and abuse as a statewide $20 Billion highway construction program. Some might claim it is more-likely, since the sophistication of the oversight function is much less on the local school district level.

The California Legislature recognizes that people are people, people make choices, and sometimes people make the wrong choices. Hence, accountability was built into the law that has funded hundreds of billions of dollars of local school construction projects across the state.

Early U.S. Oversight

The United States government's support of oversight has existed since the Revolutionary War era. On July 30, 1778, Congress passed a resolution stating:

> **"It is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or any other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge."**

At this same time the Continental Congress passed a resolution authorizing the payment of legal fees for two whistleblowers who brought forward wrong-doing by a high-ranking Navy officer, Esek Hopkins. Hopkins was dismissed from his position for ignoring orders from Congress and for mistreating those under his command.

In 2022 the U.S. Senate unanimously passed a resolution designating July 30, 2022, as "National Whistleblower Appreciation Day." This day marks the 244th anniversary of the nation's creation of the first whistleblower protection act, and the National Whistleblower Appreciation Day has been so-designated every year since 2013.

Helpful Oversight Resources

Today, support for government oversight is present at all levels of government. Both private and government-sponsored organizations exist to offer published guidance and support for oversight, including:

> *Legislative Oversight Handbook*, published by the California State Assembly. The transmission letter states "Our democratic institutions have succeeded not only because we have formal checks and balances, but also because of our great tradition of public servants working vigorously to uphold their democratic contract and make government institutions work for the people." https://www.assembly.ca.gov/OversightHandbook
>
> *Congressional Oversight Manual*, published by Congressional Research Services. In the Manual's Summary it states: "Today's lawmakers and congressional aides, as well as commentators and scholars, recognize that Congress's lawmaking role does not end when it passes legislation. Oversight is considered fundamental to making sure that laws work and are being administered in an effective, efficient, and economical manner. This function is seen as one of Congress's principal roles as it grapples with the complexities of American government." https://crsreports.congress.gov/product/pdf/RL/RL30240/37
>
> *Levin Center for Oversight and Democracy* at Wayne State University Law School. From its Internet website: "The Levin Center's mission is to strengthen the integrity, transparency, and accountability of public and private institutions through the promotion and support of bipartisan, fact-based legislative oversight; to advance good governance, particularly with respect to the legislative process; and to promote civil discourse on current issues of public policy." https://levin-center.org/
>
> *The Project On Government Oversight* (POGO). Its Mission, from the organization's website: "POGO is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing." https://www.pogo.org/

Annual Summary of Findings and Recommendations, Report of the Inspector General, California Department of Transportation. This document illustrates a variety of oversight techniques, principles and practices which can be applied to local school construction projects.
https://ig.dot.ca.gov/-/media/ig-media/documents/reports/ioai_annual_summary_20-21_ada.pdf

The Council of the Inspectors General on Integrity and Efficiency (CIGIE) is an independent entity within the executive branch of the federal government. Its mission is to "Address integrity, economy, and effectiveness issues that transcend individual government agencies, and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices if the Inspectors General."
https://www.ignet.gov/

Another excellent source of information is the California Association of Bond Oversight Committees (CABOC), found online at https://www.bondoversight.org/

CABOC was founded in 2019 as a California nonprofit public benefit corporation, "dedicated to the proposition that taxpayers deserve information on proper school bond expenditures through facilitation of independent CBOCs in accordance with the passage of Proposition 39 (School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements.)," according to its website.

The group's mission is to provide support for CBOCs with training, newsletters, conferences and workshops, and to represent the interests of bond oversight committees in Sacramento.

The CABOC website includes links to over 40 related websites, along with a FAQs (Frequently Asked Questions) page with over 50 Frequently Asked Questions. The website home page includes a Resources page with information on the Ralph M. Brown Act, Performance Audits, Facility Plans, and a dozen Training Videos available at no cost through YouTube.

Colton Hall in Monterey was constructed in 1849 to serve as California's first schoolhouse and a civic meeting hall. The classrooms were on the ground floor, with the floor above serving as the meeting room. Today the first-floor classrooms are used by the City of Monterey Planning Department, and the second floor is a museum.

Task Two: Conduct oversight, ask questions and probe, investigate bond-financed construction activities.

Fraud, waste and abuse are pretty general terms. But in certain legal situations they have very precise meanings. Nothing in this document constitutes legal advice, so we will be focusing on generally what the words mean.

Fraud can be described as the purposeful deception of another for one's own gain. This can be accomplished by stating something that is not true, or it can occur by remaining silent and not saying something, when it ought to be said.

Waste is not using a resource wisely, perhaps by doing something in a careless manner, or deciding to expend a resource in an inefficient or ineffective manner.

Abuse has been defined as improper or excessive use of a resource, or the use of something in a manner contrary to the common or legal rules for its use. This includes both financial or non-financial settings.

So, for instance, if a contractor were building a theater for a middle school, and he submitted invoices for labor hours that were not actually worked, the contractor might be committing **fraud.**

If this contractor ordered materials for the interior of the theater, and left the materials unprotected at the job site and they became damaged by the weather, the contractor might be committing **waste.**

And if this contractor used the materials, even though they were damaged, assuring the school district project superintendent that it was a common industry practice, the contractor might be committing **abuse.**

Example Indicators of Fraud, Waste and Abuse

At the federal level, the Office of the Inspector General at the Environmental Protection Agency (EPA) has compiled a list of "Fraud, Waste and Abuse: Indicators and Examples." This list includes 31 **Examples of Fraud Indicators**, six **Examples of Abuse Indicators**, and six **Examples of Waste Indicators**.

Three "Examples of Fraud Indicators" are such things as 1) Missing files, reports, data, and invoices (both electronic and paper); 2) Missing, weak, or inadequate internal controls, or 3) Inadequate or missing documentation.

Three "Examples of Waste Indicators" are 1) Incurring unnecessary costs resulting from inefficient or ineffective practices, systems, or controls; 2) The extravagant, careless, or needless expenditure of funds; and 3) Programmatic or operational mismanagement.

Three "Examples of Abuse Indicators" include 1) Making procurement of vendor selections that are contrary to existing policies or are unnecessarily extravagant or expensive; 2) Creating unneeded overtime; 3) Requesting staff to perform personal errands or work tasks for a supervisor or manager.

The full list of all 43 Indicators and Examples are included in Appendix D.

There are 29 separate California state codes which include the detailed rules that control aspects of living in the state. There are lots of details, and attorneys are trained to work with this complexity.

Finding wrong-doing in a construction bond program is not easy. The oversight process typically starts with the district administrator in charge of the program explaining information that he has brought forward to review with the Citizens' Bond Oversight Committee (CBOC).

This information will include details about projects underway, purchase orders that have been generated, and invoices that have been received and possibly already paid. There are often many facilities simultaneously under construction at many school sites.

Consider a district's construction program that includes six school sites, each with half a dozen projects underway, with dozens of purchase orders and invoices for each project. The amount of

information being presented can easily be overwhelming. One CBOC member has said "It is like drinking water from a fire hose."

The Oversight Plan

That is why successful oversight requires a plan. A plan will make a large amount of construction activity information understandable, and it will make millions and millions of dollars being spent on new and updated facilities comprehensible.

Step 1 in creating a plan is a goal. The goal of the CBOC, as set by the California Legislature, is to ensure that construction bond expenditures "… are in strict conformity with the law." Note that there are no limitations on which laws, or when the construction expenditures must conform to the law. *Education Code Sec. 15264(a).*

One planning approach might be to start with the largest construction expenditures, either by project size, project type, school site, or any other measurement method that makes sense. A great starting point is the project list, which is a part of the ballot measure approved by the voters. Looking into a single project's expenditure will narrow the focus, and allow for a more detailed review of a subset of expenditures, as opposed to a surface-level examination of all expenditures. Picking an area to explore is an important part of a plan.

Step 2 might be to determine, in a common-sense manner, what documents and people are involved in this area of expenditure. Many construction projects begin with a "Request for Proposal (RFP)," Request for Qualifications (RFQ), or other such document, where the school district seeks bids for a well-designed and detailed construction project. At some point a construction company responds, and says "We will do this, and charge you this, with these terms and conditions attached for both of us."

Once there is agreement, and the contract is awarded, there will be a continual stream of invoices that the school district will need to pay. These will be recorded by the district, and information describing the payments will be submitted in large blocks for the citizens' oversight committee to review.

At this point CBOC members should be asking what the expense invoices are for, and what projects they are part of, and if these projects are on-schedule or behind schedule. The presenter of the information will usually do so in a positive manner. It is fun spending other peoples' money for facilities that further a beneficial purpose in life. And what is more beneficial than building new school facilities for children?

The oversight committee member should come up with open-ended factual questions to frame the inquiry. Oversight inquiries are not like science experiments, where a committee member proposes a hypothesis and attempts to prove it. That approach produces narrow, biased results.

Instead, committee members should ask factual questions that leave room for the members to follow the answer wherever it leads. Factual questions need to be stated in a neutral, productive way. Useful factual questions will guide an inquiry into areas that might not be anticipated.

Once you ask a question, make sure the response is an answer. Responses that don't answer the question often indicate that the chief business official, facilities manager or other person presenting the bond program information does not know the answer. If it is a valid question they will know it, and they might feel bad giving a simple "I don't know" answer.

If the answers are not forthcoming, be polite and continue to ask. Explain what information you are looking for, and make sure the administrator understands. If there is still no answer to your question, ask who might be in a better position to provide an answer. Maybe it is a construction project superintendent, or someone in the district's legal office.

Often there is a delay, as the answer to the question is "I'll get back to you with the information." Follow-up on this, and make sure the inquiry does not fall through the cracks and get forgotten.

Explain the steps that might follow, if the question does not get answered. Going public with the question and lack of an answer is an option that is always available, since the CBOC must report their actions and findings to the Public.

Always make sure the question is fair, impartial, and reasonable, because ultimately oversight activities must be reported to the Public. The CBOC is required by law to report to the public at least once a year. But it is up to the committee to decide if something needs to be reported in some other format, at some other time. It is up to the committee.

Step 3 would be for committee members to write up activities and findings. The committee should use a format that communicates most effectively to the Public, to taxpayers. Reports should be fact-based, with a heavy emphasis on details in documents, and the words that people used during inquiries.

If there are any assumptions or recommendations, these should be clearly stated as such. And during the report-drafting process review the documents with school district administration, so that if there are errors they are caught before the report is distributed to the Public.

It is impossible to predict exactly how oversight questions should proceed. A starting point might be to review the "Twenty Question Areas, 75 Questions" in Appendix E, on page 83. These question areas are often used as part of the traditional Performance Audit process, and so the school district administration should be able to answer any question that is asked.

Financial and Performance Audits must comply with Government Audit Standards issued by the Comptroller General of the United States, according to Education Code Sec. 15286 and the Audit Guidelines, Appendix A, issued by California's Education Audit Appeals Panel (EAAP). (It should be noted that the Constitution and the "Strict Accountability in Local School Construction Bonds Act of 2000" apply to K-12 school districts AND community college districts, grades 13 and 14, while the EAAP Guidelines only apply to K-12 districts.)

For instance, a CBOC member might ask about "Procurement Fraud Prevention and Detection Controls."

- What controls does the district have in place to prevent and detect procurement fraud?

- Has the district implemented an ethics policy, reporting protocols, staff screening requirements, consequences, training, and escalation procedures to prevent and detect fraud?
- Are duties segregated in a manner that prevents unauthorized obligations and payments?
- Is there a process in place to monitor controls implemented to identify, report, and address significant procurement anomalies?
- Are methods in place to verify key reports used for key construction program management decisions, for accuracy and completeness? If so, what are they?
- Does the district have a "fraud reporting hotline" to make it easy to notify the district of suspected fraud?

While these questions are general in nature, getting answers that apply to one large project will provide insight into the likely practices at all of the school district's construction projects.

State-Level Oversight

The ***California State Assembly Legislative Oversight Handbook*** is a great resource for oversight principles and practices. In the section titled "Defining Legislative Oversight," the document states:

> "Generally, informational hearings provide the State Assembly with an opportunity to inspect, examine, review, and check the executive branch and its agencies. Oversight hearings can afford informative briefings for Members and staff on the organization, operations, and programs of an agency, and can shed light on what an agency thinks the legislative intent behind a given statute was and how the agency intends to implement that legislation."

While this is an example of oversight defined for a state-level government, the same concepts apply for oversight at the school district level. An oversight committee member should think of the school district's bond program as a governmental agency, and the building of new school facilities as the "organization, operations and programs of an agency."

In all cases, successful oversight requires a commitment to research. In the context of the California Assembly, one primary information-gathering tool used is the 'hearing." In the context of bond-financed school construction programs the tool is the "meeting."

Using the ***California State Assembly Legislative Oversight Handbook*** as a guide, there might be two types of oversight meetings. One is called an "Informational Oversight Meeting," and the other is called an "Investigatory Oversight Meeting."

The **Informational Oversight Meeting** would give oversight committee members a chance to deepen their knowledge of bond program aspects, such as the design and construction of one particular facility, like a multipurpose room or a classroom building.

An **Investigational Oversight Meeting** might be used to deepen a committee member's knowledge of one specific action or event, and how it is connected with established policy or

law. This meeting is more focused on specific fact-finding, and may be more adversarial or confrontational, since the actions being investigated may not be entirely in conformance with policy or a law.

Both types of meetings are important and necessary for the CBOC to achieve the intent set down in the first section of the "Strict Accountability in Local School Construction Bonds Act of 2000." Both meetings can be the substance of communications with the Public, either in the annual report, or in a periodic report.

The California Constitution and the "Strict Accountability in Local School Construction Bonds Act of 2000" both require that a project list be submitted to the voters, on the same ballot measure as the bond proposal. Attorneys working on behalf of school districts do their best to create lists that encompass every imaginable project for which the bond funds might be used.

But sometimes a new need will arise, after the ballot measure has been voted on and approved by the local citizenry, and a school district will use bond money for this purpose. So as part of getting familiar with the bond program, ask for a copy of the ballot measure and review the list of authorized projects, to make sure that borrowed money is only spent on projects listed on the project list.

Frequently a school district will have a Facilities Committee that has undertaken to make recommendations in the form of a Master Facilities List. This committee might include district staff, members of the school district administration, perhaps representatives from each school site, along with representatives of faculty, staff and parents.

This process may identify facilities at nearby or comparable school districts, and come up with a wish list of facilities that would be nice to see in the school district. A natural tendency is to imagine new or improved facilities, where other districts might have older facilities. But the end result is to identify new facilities that the school district might build, if there existed available school construction bond money.

The Traffic Light Program Management Method

When construction projects financed by a school bond program have been underway for a while, it is often the case that a great number of projects are occurring at the same time, all at different points of completion, each at a unique schedule status. Managing the review of many projects efficiently, in a timely manner, is a challenge.

The "traffic light assessment method" is an effective tool in project management, and is frequently used in factories, workshops, and project management situations where there are many projects underway simultaneously. It can be used to manage oversight activities.

The method uses traffic light signal colors to communicate status information, and has been found to be effective and efficient. Red indicates a project that has stopped or is behind schedule. Yellow typically indicates that project progress has slowed, that the project is behind schedule, and that attention is required in order to get it back on schedule. Green indicates a

normal project status, and that a project is running smoothly. Additional colors can be used to convey specific information.

Jack Weir has worked on four CBOCs, the John Swett Unified School District, the Mt. Diablo Unified School District, the Moraga School District, and the Contra Costa Community College District. His CBOCs served as watchdog for over a billion dollars of construction projects. He has advised other CBOCs, and in 2019 helped found the California Association of Bond Oversight Committees, a statewide organization that focuses on assisting CBOCs.

"At Contra Costa Community College District, we had a very senior facilities administrator bring in extensive construction details in four-inch binders, covering projects representing almost a half-a-billion dollars' worth of construction activities. It was really too much data; he was too thorough," Weir said.

"The traffic light assessment method allowed us to determine which things needed to be looked at, and which did not. Green Projects got four- or five-seconds worth of attention, and Yellow Projects about the same," he said.

"Red Projects, those are the ones we spent more time on, asking why they were Red. Usually there were reasons, like contractors not doing what they had promised to do, not delivering what they had promised to deliver."

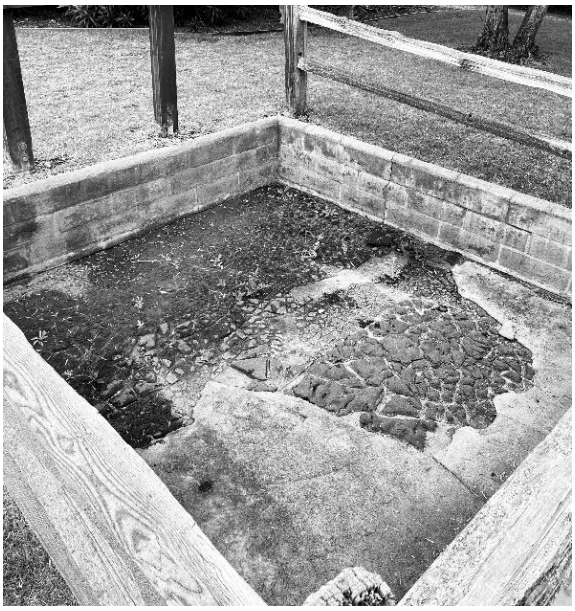
The senior facilities administrator thought the approach was beneficial in that he was able to prioritize his staff's time, spending more time on determining the reasons projects were going off track, becoming late and over budget.

"Since the amount of information provided may be massive, a citizens' oversight committee can be more effective by sampling material rather than trying to peruse everything submitted. This is especially helpful with invoices, change orders, etc.," Weir said.

"The use of subcommittees is also helpful in dividing the work, and making citizens' oversight committee meetings more expeditious, particularly when given large numbers of documents to peruse."

In many school districts, the Proposition 39 bond funded projects are a once-in-a-generation series of facility construction projects, and the school district administration has never before handled the number of projects, the sheer size of the projects, or the dollar amount of project expenditures. These inexperienced agencies are particularly susceptible to problems caused by starting projects before the necessary policies, procedures, and systems are in place. This is particularly true when elected officials and administrators feel the need to start moving dirt as soon as possible after a bond measure is enacted.

Consequently, the school district tracking systems may not be as effective and efficient as possible, and asking questions may uncover skill and knowledge deficiencies in school administration staff.



Only the floor remains of the first postsecondary institution built in California. This is the original asphalt floor of "College of Our Lady of Refuge of Sinners" seminary. It was built in 1844, within Mission Santa Ines, near Solvang.

Task Three: Discover, then overcome, the tendencies and influences opposed to oversight.

The need for government oversight is universal, caused by fundamental human nature. When decisions on millions and millions of dollars are made, in the setting of government construction activities where billions and billions of dollars are ultimately involved, oversight is needed.

And oversight is also needed in situations when it is thought that no one is watching. An official oversight function helps encourage that proper actions are taken by publicly presenting the fact that "someone is watching."

This is a beneficial result of the California Legislature's mandated citizens' oversight committee function included in the "Strict Accountability in Local School Construction Bonds Act of 2000."

Of course, no school district or construction industry professional likes someone looking over their shoulder as they do their job, someone who might be second-guessing their decisions, and examining the outcomes.

And there is a tendency to not appreciate the oversight function and oversight activities when they are present. Even though the need might be recognized, and the legislative mandate

understood, school district administrators and construction industry professionals may not embrace oversight.

After all, if the purpose of oversight is to identify fraud, waste and abuse, who might be caught committing fraud, waste and abuse?

And so sometimes there is a natural bias against oversight, and opposition to comprehensive, thorough investigation activities conducted by the CBOC.

Many actions taken by those running the financing, planning, and construction of school facilities tend to limit the effectiveness of oversight. Examples of these actions include:

- Shepherding the enactment of CBOC bylaws written by attorneys working for school district administration;
- Providing limited or no education and training on oversight, bond financing, and construction project and program practices;
- Writing committee member position descriptions and application forms that minimize the scope and activities required to provide the "vigorous efforts" of oversight that is required by the "Strict Accountability in Local School Construction Bonds Act of 2000";
- Delaying or refusing to provide information to the CBOC, or refusing access to district facilities, or financial, procurement or other personnel, especially as it relates to program performance;
- Denying access by the CBOC to independent legal counsel;
- Limiting the Public's access to members of the CBOC, and limiting the CBOC's communication with the Public.

The role of the CBOC and the job of each committee member is to oversee the expenditure of bond funds and uncover indications of fraud, waste and abuse, and actions that may result in the improper expenditure of bond funds. This government oversight function is widespread, in many government agencies at the federal, state and local levels.

Whistleblower protection laws also extend to all levels of government, with many programs offering lucrative rewards for coming forward with allegations and evidence of fraud, waste and abuse of government money.

After the passage of 1978's Proposition 13, the "People's Initiative to Limit Property Taxation," a group of special interests formed an association to counteract the property tax rollbacks and limits that were at that point enshrined in the California Constitution.

The changes Proposition 13 brought to California state government were widespread and significant, but the major impact to the education sector included requiring new taxes and bonds to receive two-thirds voter approval to pass, and a rollback of some taxes. This caused a reduction in government education funding, at both the state and local levels.

CASH for Schools

In order to advocate for increases in school facility construction and renovation, the "Coalition for Adequate School Housing" (CASH) was formed. CASH promotes

measures throughout California that fund the construction of new school facilities for K-12 school districts, along with the renovation and maintenance of school properties.

The organization is comprised of over 1,200 school district and county office of education members, as well as private sector contractors, architects and engineering (A/E) firms, bond underwriters, law firms, consultants, and many others in the business of school construction and modernization. Its website in 2022 stated that "Since 1982 CASH has sponsored or supported over $61 Billion of successful statewide school bonds to build/renovate thousands of schools."

In 2018, according to public tax records, the organization had over $4.5 million in annual revenue, and over $2 million in net assets.

CASH is not the only association advocating for the education-construction complex, just one of the largest. Few California residents would argue with the noble goals stated by the nonprofit: "CASH is dedicated to making sure the students of California have access to quality, safe, and healthy environments that foster learning and success."

There is nothing wrong with promoting public financing of school construction and new taxes. However, the Public needs to make sure that the resulting bond measures and taxes primarily satisfy the educational needs of the Public, and that the profit derived by contractors and consultants is fair and reasonable.

It is interesting to note that primary and secondary education in California is overwhelmingly paid for through a combination of state and local funds. Ultimately, these state and local funds come from the California taxpayer, in one method or another.

The California Budget for 2021-22 lists eight revenue sources, and an "Other" category. The eight sources are 1) Personal Income Tax, 2) Sales and Use Tax, 3) Corporate Tax, 4) the Highway Users Tax, 5) Insurance Tax, 6) the Alcoholic Beverage Taxes and Fees, 7) the Cigarette Tax, and 8) the Motor Vehicle Tax. When combined with the Other category, the total revenue for the state is $239,839 million.

For the same year the California Budget lists $262,589 million in expenditures. The budget lists 14 expenditures by state agencies. The largest expenditure by agency is Health and Human Services, representing 31.9% of the total, followed by K-12 Education, with 25.5% 0f the total.

These "K-12 Education" funds are primarily used for running the schools, paying for teacher, staff and administrator salaries and expenses.

According to California's Revenue and Taxation Code, each school district also receives a fixed percentage of the property tax revenue generated by property within its service area. This percentage varies across each school district in the state. As this property tax amount increases in dollars, the dollars school districts receive increase as well, using the static percentage as a multiplier.

State and local school districts also borrow money on the global capital markets, frequently proposing bond measures which provide up-front money in exchange for repayment over a lengthy period of time. All of these funding events must be approved by statewide or school districtwide voters.

Often the funds provided by the state are not enough. Local school districts feel their needs exceed the capacity of state and local funding, and so those most closely involved in education create a plan to get additional funding approved by local voters.

The traditional voter approval level needed to implement a new general tax or bond borrowing is two-thirds, and this is still available to school districts. Since 2000, with the passage of Proposition 39, the opportunity for a lower approval level of 55% has existed. But with any new tax or borrowing proposal, the voters or the California Legislature must approve it.

And so, a cycle of money exists in California. On a basic level this cycle can be described as:

"Create a Wish List -- Borrow Money -- Spend Money."

The players in this cycle are clearly visible. The education industry, the bond industry, the legal industry, the ballot measure campaign industry, and the construction industry all participate in and benefit from this cycle. Each of these industries has specialists who earn their living powering the cycle, providing benefits and services to others in the cycle.

Regardless of how it is examined, behind it all is the property owner who pays taxes. In order to provide adequate classroom and school facilities, the voter needs to approve increasing amounts of taxation.

Between March 2001, and the fall of 2022 California voters have authorized almost $181 billion of local K-14 general obligation bond borrowing authority. (Grades 13 and 14 are community college level.) There were 1,377 school construction bond elections held during this time, with 1,314 (95.4%) falling under requirements of the "Strict Accountability in Local School Construction Bonds Act of 2000." There were 63 bond measures conducted under non-Proposition 39 rules, with a two-thirds majority required for passage and less stringent accountability requirements.

Of the nearly $181 billion worth of construction bonds approved since the 55% approval threshold took effect, 28.6% of the funds have not been issued. This means that even though the voters approved borrowing money for specific school facilities, the school districts have not issued the bonds (borrowed the money) to build the facilities, according to an April 2022 report by the California Debt and Investment Advisory Commission.

In October, 2021, the state agency handling the disbursement of school construction funds announced that 97 school districts would be receiving $754.9 million. These funds are part of $7 billion approved by voters in 2016, with the passage of Proposition 51, the "School Bonds. Funding for K–12 School and Community College Facilities Initiative Statute."

The Office of Public School Construction is part of the California Department of General Services, and works in conjunction with the State Allocation Board in determining where state funds go.

So, school construction is funded by both local and state agencies, and agencies at both levels are good at getting approval for construction borrowing.

The Cycle of Money

As it relates to the construction of school facilities, this cycle starts with a **"Wish List"** description of facilities that in an ideal world would be available to all those charged with managing and delivering education to California's students, from kindergarten through community college levels.

Often the school district's current facilities are inventoried, and their state of disrepair is documented. The state of the art in educational facilities is reviewed, looking at the best-of-the-best new facilities anywhere in the world.

A comparison between the existing reality and an ideal possible future is made, and then a rough dollar amount is attached to the ideal future. Sometimes school districts create groups to perform this function, often organizing them on a school site basis, including the principals, teachers and parents from each school. Members of the school district's management and community demographic consultants also participate.

Once a wish list is developed, the rough dollar costs are associated with each selected project, and a total is determined. After adding inflation factors stretching across the potential time span of construction, then adding and subtracting other factors, the total amount of money needed to borrow is determined.

All of these activities are done by specialty consultants, traveling experts who orchestrate this process repeatedly for school districts up and down the state.

Then the next phase of the cycle, **"Borrow Money,"** begins, with consultants putting together proposals that have a good chance of gaining voter approval. Legal, campaign strategy, voter polling firms and bond counsel consultants are just some of the specialists who make a living providing services in this phase of the cycle.

Precise ballot language is used to construct a ballot measure, and information is presented to the voting public in ways that are not blatantly persuasive, but can be seen as informational.

California state law prohibits government agencies from using public funds to argue for or against any ballot measure that goes before the public. At the same time, the school districts and the consultants working for the school districts definitely want the measure to pass, for the good of the children. So, the legal line of demarcation between persuasive speech – asking for a "Yes" vote - and informational speech – "educating" the voters as to the benefits of the measure if it passes and the negative outcomes possible if it does not - becomes critical for all members of the school district administration and their consultants.

Once the measure is voted on, and approved, the third phase of the cycle begins: "Spend Money." This phase is populated by an entirely new set of consultants, and involves planners, architectural/engineering firms, construction management consultants, and eventually actual construction companies and materials/equipment suppliers.

This **"Wish List, Borrow Money, Spend Money"** cycle can potentially repeat itself over and over. Once the construction of one **"Wish List"** is completed, a new one can be conceived. Often a new **"Wish List"** is created before the first cycle's **"Spend Money"** phase is complete.

Because so often tens and hundreds of millions of dollars are involved for each school district, and sometimes billions of dollars for larger school districts, the opportunity for fraud, waste, and abuse is great. Human nature is universal, and human failings naturally occur. In instances of great temptation, there is often great human failing.

Which is why the need for oversight is so great now, and will be increasing in the future.

Imagine, if you will, that over a thousand school districts throughout California need to build and renovate their facilities. Classrooms, auditoriums, gymnasiums, theaters, sports fields, and other related structures all need construction funds, and while non-Proposition 39 bonds are still available to school districts, the ease of getting 55% voter approval instead of 67% approval makes the Proposition 39 bond funds the desirable choice.

As of this writing (early 2023) the total value of Proposition 39 bonds that have been passed by the voters is approaching $200 Billion. And this is just since 2000, when the law was implemented.

Let us examine another large construction program, and the results of a comprehensive oversight function.

A $20 Billion Bond Measure Example

Ballot measure Proposition 1B, officially titled "Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006," was enacted by the voters of California on November 7, 2006, authorizing the issuance of $19.925 billion in general obligation bonds for specific transportation programs over a ten-year period.

Under Government Code Sections 8879.2(c) and 8879.50, audits are required of bond project expenditures and outcomes.

State agencies, including the Inspectors General of the Independent Office of Audits and Investigations, are responsible for these annual audits.

The Annual Summary of Findings and Recommendations for the period July 1, 2020, to June 30, 2021, sent to Governor Gavin Newsom, Members of the Legislature, the California Transportation Commission as well as made available to the Public, reported on 23 audits and over 300 reviews. These reviews resulted in 139 recommendations intended to improve program performance once implemented.

Of the 23 audits, two were program audits, nine were local agency audits, four were construction audits, and eight were Proposition 1B procedural compliance audits.

In the one year reported, 28 total transportation projects were examined in the local agency category. A total of $1,917,740 in disallowable costs were identified, from total project expenditures of $17,642,544, about 11%.

These disallowable costs represent a significant amount of taxpayer monies, and demonstrate the value of oversight in large government construction projects.

The full report can be read online here: https://ig.dot.ca.gov/-/media/ig-media/documents/reports/ioai_annual_summary_20-21_ada.pdf

The Columbia School is California's oldest two-story brick schoolhouse. Built in 1860, the original estimated cost was $4,800.00, with the actual cost coming in at $4,898.00.

Task Four: Dig into the details of oversight, methodically search for facts and information.

The purpose of oversight, of drilling down into the details of bond-financed construction programs, is to give taxpayers confidence that funds are being spent wisely, and that fraud, waste and abuse is avoided. This is the legislative mandate to the citizens' bond oversight committee (CBOC). The law requires, and the Public deserves, vigorous and effective oversight of how their money is spent.

It is not necessary that any review by a CBOC develop proof of wrong-doing. If a CBOC member feels uneasy about something, they should ask questions, and get straight-forward answers. These answers constitute the "information" upon which "information and belief" is based, and it is this "information and belief" that may eventually be referred to proper investigatory agencies.

It is important to remember that a CBOC is not a law enforcement agency. The law creating the CBOC calls for it to take vigorous efforts to assure that bond expenditures comply with the law, and to then report to the Public. Members of the Public, which includes CBOC members, are able to use the courts to restrain and prevent any expenditure of funds being used for purposes other than those allowed by law, or that "produce waste or great or irreparable injury." See Education Code Sec. 15284 for more details.

The Legislature intended, as stated in Education Code Sec. 15288, that serious questions, such as allegations waste, misuse of funds, or of possible criminal activities, be "expeditiously" investigated and prosecuted by appropriate law enforcement officials.

Seeking answers to legal questions from the school district's counsel may pose an ethical problem for district counsel. Legal ethics require that attorneys act in their client's best interest, and the CBOC is conducting oversight and reporting to the Public. The CBOC is not the client of the school district's attorney, the school district is. In instances of potential conflict, the CBOC may consider reporting serious issues to special members of the Public, such as the District Attorney and the county Grand Jury.

Often the school district administration will be eager to provide the CBOC with pages and pages of information. If a bond-financed construction program has been in place for any length of time, a wide variety of construction-related work will have been done, and this work needs to be paid for, and is subject to CBOC review.

As a consequence, extensive data describing purchase orders, invoices and payment statements will be submitted for committee review or approval. Invariably the school district chief business official, or the construction superintendent or director, will be presenting the information, explaining how well each category of projects is going, often with information organized by school or construction site.

If it looks like the information the CBOC is being asked to review or approve comes out of a computer, it should, because it does. School districts have complex construction accounting and program control application software to handle the purchase orders specifying the work that needs to be done, collecting information from invoices detailing the work actually being done, the payments, and the issuing of reports on the payments.

These information systems control the flow of funds. And this is where common sense comes into play on the part of a CBOC member. Does the story that's being told with the information make sense? Do the numbers support the story? Does all the information seem reasonable?

The Details of Spending Money

The "school construction process" begins with the district determining, before going to the Public and asking for bond measure approval, that it needs additional, remodeled or upgraded facilities (or furnishings or equipment). This is often done by appointing a committee of school district employees and residents to develop a Facilities Master Plan. This plan is high-level, and deals with population trends, the age, and the useful life of current facilities.

A ballot measure is then developed and placed before the voters, stating a project list, an amount of money to be borrowed, as well as many other necessary details. Once passed, the CBOC is appointed by the school board.

Oversight begins once the CBOC is appointed, and the responsibility for oversight continues until there are no further expenditures of bond funds.

Generally speaking, the conceptual "school construction process" continues like this:

1. The school district completes architecturally approved plans, with quality and function details specified in design documents, approved by a state agency.
2. The district invites bids, and decides to purchase a product or service from a particular company;
3. The district issues a purchase order (PO), vendor number or other tracking device, using a purchase order template in an information system that is set up to track, authorize and pay invoices;
4. The company providing the product or service receives the PO and confirms it can fill the order;
5. The company begins preparing to fulfill the order by pulling the inventory together or scheduling necessary personnel;
6. The order is shipped, or service provided, with the PO number on the packing list so the school district knows which project, task and vendor is associated with the cost;
7. The company invoices the school district, using the PO number, so that it can be matched with the construction project.
8. The school district pays the invoice as specified in the PO.
9. A state agency reviews the construction paperwork and inspects the actual construction, and once it is convinced that all requirements are satisfied, it issues a public project closeout letter.

The California Division of State Architect provides design and construction oversight for K–12 schools and community colleges, and provides extensive detailed standards and procedures in this field. It is also the source of accessibility, structural safety and historical building codes and standards utilized in public buildings throughout the state.

In most instances school districts need bond financial consulting, legal and architectural professional services. Services of this type are obtained using a Request for Qualifications process, and then a contract or engagement agreement, which states the details of the work to be done, the term of the engagement, compensation, and often interim deliverable products or service milestones. These types of agreements are focused on the more sophisticated level of services needed for school construction projects, services that require specialized education, licensing and experience.

The underlying details of the agreement, such as the type of work, the purpose, the cost, and the efficiency of the work, all should be examined to a level similar to the PO/Invoice expenditure process.

If an expenditure seems to hint at being fraudulent, wasteful, or abusive, it is important for the CBOC member to ask questions, and learn more about the instance of the expenditure, and possibly the series of expenditures. If a single expenditure is questionable, there may be many

similar expenditures following the same pattern, either at the same or other construction sites, or with the same or other service providers or materials vendors.

One way to investigate such an instance is to develop a "Case Study," to explore one expenditure example that might be typical of trends and represent a pattern of bond fund expenditures. This practice allows the examination of a specific expenditure details, with the development of the names, position titles, required approvals and the results involved in the transaction.

When selecting a case study consider if it illustrates a larger potential problem. Ask if there are many similar occurrences throughout the construction program. Is the case identified a good example?

Examine the transaction practice from the perspective of the Public, and the media. Will the Public pay attention, if fraud, waste, or abuse are identified? Are the names of the participants and organizations significant enough, numerous enough, to capture the interest of the Public?

Often getting an expert to come in and talk about a practice is a simple way to clarify a bond finance or construction practice. While an invited expert can speak in general terms, without the specifics developed in a case study the exact practice and behaviors cannot be reported to the Public, and corrected.

When considering developing a Case Study it is important to determine whether you, as a CBOC member, and the CBOC as a whole, have the time to invest in gathering the necessary information. And will the investigation be opposed by those participating in the transaction?

Consider if the CBOC will be provided with the technical and administrative resources to conduct the investigation, as specified in the "Strict Accountability in Local School Construction Bonds Act of 2000" and California's Education Code Sec. 15280(a)(1), which states:

> **"The governing board of the district shall, without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee."**

The use of a Case Study should have a broad impact on the school bond-financed construction program, and be supported by the major program participants. And once completed and publicized, the investigation should lead to a significant, and perhaps districtwide, impact on the program.

Ultimately, the Public is the beneficiary of all bond expenditure oversight activities. The Public should gain greater visibility into the results and efficiency of how public funds are being spent.

When drilling down into the details of the bond-financed construction programs, it is important to conduct an objective analysis to assist school district and program management, along with those charged with governance and oversight of bond expenditures. That way program performance and operations can be improved, costs reduced, and public accountability is increased.

Program Performance Areas

The CBOC is free to investigate any and all areas it feels are appropriate. According to Education Code Sec. 15286, annual Performance and Financial audits are to be conducted according to the Government Audit Standards issued by the Comptroller General of the United States. The California Education Audit Appeals Panel (EAAP) Audit Guidelines, Appendix A also requires compliance with Government Audit Standards issued by the Comptroller General of the United States.

The EAAP Audit Guidelines primarily deal with determining the correct amount of state funding each school district receives. Its website states "The Education Audit Appeals Panel (EAAP) serves as the neutral arbiter in informal and formal administrative appeals by K-12 local education agencies. EAAP adopts as regulations, according to a statutory timetable, the audit guide used in those annual audits."

Appendix A was added following the passage of Proposition 39. It includes sections on 1) Scope/Auditor Judgement; 2) Auditing Standards; 3) Report Components for both Financial and Performance Audits; and 5) Audit Procedures for both Financial and Performance Audits.

The "Auditing Standards" section reads: "Audits shall be conducted in accordance with the auditing standards set forth in *Government Audit Standards* issued by the Comptroller General of the United States, and the provisions of this Appendix." The Audit Guidelines and Appendix A can be found online at the EAAP website, https://eaap.ca.gov/

The *Government Audit Standards* issued by the Comptroller General of the United States suggest four broad program performance objective areas that might be explored for instances of fraud, waste and abuse. This set of standards describes areas of 1) program effectiveness, economy, and efficiency; 2) program internal controls; 3) compliance with Constitutional and legal requirements; 4) program's prospective future analyses and the current status or condition of a program.

These broad investigation areas are not mutually exclusive, and indeed there is a significant overlapping of areas. For example, an investigation of the bond-financed construction program's effectiveness may also involve evaluating the program's internal controls.

A casual review of public documents at CBOCs reveals 20 investigation areas that may be worthy of consideration. The 20 areas of potential inquiry are:

1. District and Professional Services Staffing Plan for the Bond Program;
2. Design and Construction Schedules Cash Flow Analysis;
3. Design and Construction Budget Management;
4. Bidding and Procurement Procedures;
5. Procurement Fraud Prevention and Detection Controls;
6. Bond Program Master Planning and Reporting;
7. Cost, Schedule, Budgetary Management, and Reporting Controls Implementation;
8. Claim Avoidance and Control Procedures;
9. Material Specifications;
10. Cost Benefit and Value Engineering Analyses;

11. Maintenance of District Assets Funded by the Bond and Warranty Conditions Compliance;
12. Implementation of Schedule Quality, Scope, and Performance Management Controls;
13. Change Order Management and Controls Application;
14. Contractor Billing Compliance Controls;
15. Project Close-Out Controls;
16. Refunding of Outstanding Bonds;
17. Timeliness of Payments;
18. Local Participation Requirements;
19. CBOC Compliance;
20. Transparency of Bond Program.

A list of 75 questions associated with these 20 investigation areas is included in "Twenty Question Areas" in Appendix E, on page 83.

Constitutional Oversight Requirements

When California voters approved Proposition 39 in November, 2000, Californians approved a change to the California Constitution. Like the U.S. Constitution on a federal level, the California constitution is the highest law in the state.

The Constitutional changes made by Proposition 39, titled the "School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements. Act," can be found beginning in Article XIIIA, Section 1. When considering the CBOC function, the Constitution says that bonded indebtedness using the 55% approval threshold must comply with a series of requirements. Quoted from the Constitution, these stipulations are:

> "(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIIIA, Section 1(b) (3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.
>
> "(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.
>
> "(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.
>
> "(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects."

The full text of Article XIIIA Section 1 is included in Appendix F on page 87.

These requirements are just one set of stipulations that Proposition 39 bond-funded construction programs must comply with, of course. The "Strict Accountability in Local School Construction Bonds Act of 2000" includes a second set of requirements, which are broader and more expansive that the Constitution's requirements.

Both sets of requirements must be satisfied, as must all other requirements included in the 29 California Codes enacted into state statutes.

Many elements included in the "Strict Accountability in Local School Construction Bonds Act of 2000" are not included in the Constitutional amendments, yet compliance is just as legally necessary as any state law.

The Constitution says that the proceeds of bond sales can only be used for "… the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, …"

The Constitution also says bond proceeds are to be used for only these purposes, "… and not for any other purpose, including teacher and administrator salaries and other school operating expenses."

This language can seem to be precise and specific, on paper. But when applied to the real world set of school district and construction challenges it can become less clear, and perhaps confusing, with gray areas aplenty.

For instance, hypothetically, let's say a school district identifies the need for elementary (K-6 grades) and middle (7-8 grades) schools, and specifies construction projects meeting this need on the ballot presented to the voters for approval. Following the election, when the voters approved the ballot measure, the school district decides it needs a facility that handles students at all levels, grades K-8, in a single location.

The voters approved an elementary school (K-6 grades), and they approved a middle school (7-8 grades), but they did not approve a combination (K-8 grades) elementary and middle school.

Would the school district satisfy the Constitutional requirement for "A list of the specific school facilities projects to be funded …"?

In this instance the school district administration might say that a combined K-8 grade school satisfies the functions of both elementary and middle schools, as included in the projects list the voters approved.

But the law doesn't say that all expenditures must meet the functional needs of projects listed on the ballot measure the voters approved, or even that they meet the educational needs of the community.

The Constitution requires "A list of the specific school facilities projects to be funded …"

And so, the CBOC might report these facts to the Public, in either its legally-required annual report or a periodic report, written and published to the community.

The CBOC has an *oversight* role. The CBOC is not a decision-maker on school district operational activities. Its job is to investigate, to ask questions, and to report its findings to the Public.

The construction of Colton Hall, California's first school and civic hall (1849), was financed with a tax on rum and fines levied for gambling. California's first Constitution was drafted in the meeting hall prior to the state joining the Union in 1850.

Task Five: Inform the Public with a required annual report, and with additional reports.

As laws go, the "Strict Accountability in Local School Construction Bonds Act of 2000" is fairly straightforward.

If a school district wants to use a 55% construction bond voter approval threshold, instead of the still-available two-thirds approval threshold, the school district must take a number of actions that provide the Public with insight into the district's expenditure of borrowed funds.

The California Legislature enacted this law after voters approved Proposition 39 in November, 2000. The vote was "Yes" - 5,431,152 votes, "No" - 4,756,311 votes, a 53.31% to 46.69% margin. While not overwhelming, the outcome was a clear majority.

In amending the Constitution and enacting the new law, the Legislature was serious about the necessary school district tasks it was assigning, and built in a capability for Citizens' Bond Oversight Committees (CBOCs) to use the Public and the Courts as a means to attempt to make sure bond proceeds were spent wisely.

The Legislature clearly documented this serious attitude in the first section of the new law, a preamble of sorts:

"It is the intent of the Legislature that all of the following are realized:

> **(a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in strict conformity with the law.**
> **(b) Taxpayers directly participate in the oversight of bond expenditures.**
> **(c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.**
> **(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures."** ***Education Code Sec. 15264***

The adjective "vigorous" to modify the noun "efforts," and the use of the adverb "vigorously" to modify the phrase "investigated, prosecuted, and act swiftly to restrain" are unusual language usages in the Education Code of California. But they are meant to convey a sense of urgency, of importance, to the actions that taxpayers are intened take.

The Annual Report

One of the key "shall-do" tasks required of the citizens' oversight committee is to report its activities to the Public at least once a year. Education Code Sec. 15280(b) includes these sentences:

> **The citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year.**

This clear declaratory passage means that it is the legal responsibility of the CBOC to tell the Public what actions it has taken on the Public's behalf during the course of the year. The CBOC is free to issue additional reports, when and if the CBOC desires.

The scope of oversight is broad. The CBOC can ask questions about anything it feels is involved with the expenditure of bond funds and California laws. The asking of questions is what oversight is all about, and then comes informing the Public.

When deciding what to include in the annual report, a good place to start is with the basic facts, the "Who?-What?-Where?-When?-and-Why?" of the last 12 months of CBOC meetings. Which of the appointed CBOC members attended what meetings, who from the school district administration attended these meetings, and where the meetings were held, are all activities to report.

The discussions and actions taken at these meetings should also be reported, along with issues or questions raised during the meetings. Education Code Sec. 15278(b) states that the CBOC "…shall advise the public as to whether a school district or community college district is in

compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII of the California Constitution." All this information constitutes annual report material.

In one example, the CBOC for the Beverly Hills Unified School District issued an annual report for the year ended June 30, 2018, that was comprised of five pages. Included in this annual report was a "Summary" section covering the year's activities, and then sections on "Financial Audit Results and Comments," "Performance Audit Results and Comments," followed by a closing "COC Comments" section.

Another more-lengthy annual report example is the CBOC West Contra Costa Unified School District, for the calendar year January-December 2020, issued on December 13, 2021. It included a six-page Executive Summary, seven content chapters and 19 appendices, for a total of 119 pages.

The seven content chapters are titled:

1. West Contra Costa Unified School District and the Citizens' Bond Oversight Committee
2. CBOC Annual Report Introduction
3. Use of Bond Funds and Bond Program Financial Status
4. District Audits and 2020 CBOC Compliance Statement, 2020 Bond Fund CBOC Compliance Opinion
5. 2016 Forensic Accounting Investigation (FAI) Recommendations Implementation Status
6. 2016 Long Range Facilities Master Plan Implementation Status
7. Other VBOC, Board and District Actions in 2020

Both of these annual reports satisfy the statutory requirements to inform the Public on the oversight activities conducted by the CBOC. Both are published and available to the Public in the same manner as reports generated by the elected legislative body for the respective school districts.

The CBOC is free to determine the contents of its annual report to the public, since the "Strict Accountability in Local School Construction Bonds Act of 2000" does not specify any topics that must be included.

Any information relating to the district's spending of bond proceed money may be included in the annual report. While not specifying inclusion in the annual report, Education Code Sec. 15278(b) states that the purpose of the CBOC is "to inform the public concerning the expenditure of bond revenues."

Section 15278(b) also states that the CBOC "shall" report (although not necessarily in an annual report) on "the proper expenditure of taxpayers' money for school construction." Two sections later the Education Code states, in Sec. 15280(b), that "The citizens' oversight committee shall issue regular reports on the results of its activities."

So, possible annual report contents include 1) all CBOC activities, 2) a description of bond revenue expenditures, and 3) the compliance of bond revenue expenditures with the California Constitution and all federal, state and local laws.

Education Code Sec. 15280 (b) requires that the reports issued by the CBOC be posted on the Internet, so that the Public can easily access them:

> **"Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet Web site maintained by the governing board of the district."**

These reports and other public documents, along with the minutes of oversight committee meetings, from the Beverly Hills Unified School District and the West Contra Costa Unified School District can be found at these links:

https://www.bhusd.org/apps/pages/index.jsp?uREC_ID=31885&type=d&pREC_ID=27407

https://www.wccusd.net/cms/lib/CA01001466/Centricity/Domain/1870/CBOC%202020%20Annual%20Report.pdf

In order to accomplish the Legislature's intent in passing the "Strict Accountability in Local School Construction Bonds Act of 2000" taxpayers must provide oversight of the expenditure of bond funds, and then report their findings to the Public. Once ballot measures are passed, the subsequent expenditures must comply with all applicable laws. And this compliance must be audited to standards issued by the Comptroller General of the United States, with findings and oversight activities reported to the Public.

But exactly how this is done is left up to the taxpayers providing the oversight. While at least one annual report is required, the content areas, the depth of investigation, and the details that are included in each report are all to be determined by the volunteers serving on each school district's CBOC.

It is the elected legislative body, the school board or board of trustees, that is responsible for establishing the policies and the operations of the school district, consistent with the requirements of the State Constitution, statutory and case law, applicable regulations, and proper administrative, management, and financial practices. School district administrators and managers are hired to plan and execute the operation of all aspects of the school district, including Proposition 39 school construction bond programs.

The appointed CBOC is a legally-required ***independent*** oversight committee appointed by the elected legislative body to examine the district's policies and actions, and report their oversight actions and findings to the Public.

Once an oversight committee member is appointed, the school board has limited authority to remove a CBOC member.

The CBOC has no authority over the actual spending of bond funds. But by reporting the proper and improper expenditure of funds, and publicizing the district administration's actions and decisions, the CBOC is expected to have an impact on future spending decisions.

As part of the "Strict Accountability in Local School Construction Bonds Act of 2000" the Legislature suggests activities that the CBOC ***may*** engage in. Education Code Sec. 15278 (c) states:

> **(c) In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:**
>
> **(1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.**
>
> **(2) Receiving and reviewing copies of the annual, independent financial audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.**

These Financial and Performance Audits provide independent insight into the financial and operational aspects of the bond-financed construction program. They are important to taxpayer oversight, and critical to giving volunteer CBOC members an understanding of the complex bond financing and construction program, an endeavor costing tens to hundreds of millions of taxpayer dollars.

Reading further in the Education Code, in Sections 15278 (c) (3) through 15278 (c) (5), the Legislature suggests that the CBOC ***may*** inspect the actual school facilities, review the district's deferred maintenance activities, and investigate the district's cost-saving programs.

It is clear from these sections that the Legislature wanted the school district's financial and performance audits to provide valuable insight into the bond program's operations.

Also, in the enabling law the Legislature specifies when these audits must be provided to the CBOC and the standards to which they must comply. Education Code Sec. 15286 states:

> **Consistent with the provisions contained in … the California Constitution, the required annual, independent financial and performance audits for the preceding fiscal year shall be submitted to the citizens' oversight committee established pursuant to Section 15278 at the same time they are submitted to the school district or community college district, no later than March 31 of each year. These audits shall be conducted in accordance with the Government Auditing Standards issued by the Comptroller General of the United States for financial and performance audits.**

Notice that the Legislature uses the word **"shall"** in describing both the timing of the delivery of the audits, as well as the standards to which they much comply. This is important because use of this word allows no deviation from the intent of the Legislature. It is a clear direction to school districts, which are responsible for having the audits done.

The Legislature's intent is clear: Informing the Public on where their tax dollars are going is a noble endeavor. It is so noble, in fact, that the Legislature clearly stated its intentions when it enacted the "Strict Accountability in Local School Construction Bonds Act of 2000."

"It is the intent of the Legislature that … vigorous efforts are undertaken to ensure that the expenditure of bond measures … are in strict conformity with the law … (that) taxpayers directly participate in the oversight of bond expenditures … (that) members of the oversight committees … promptly alert the public to any waste or improper expenditure of school construction bond money … (and) that unauthorized expenditures … are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures." *Education Code Sec. 15264*

This law, and the Proposition 39 amendment to the Constitution, requires that Financial and Performance Audits of bond fund expenditures be completed each year. This law states as much in clear, precise language.

The "Government Auditing Standards" issued by the Comptroller General clearly spell out the purpose and objective content areas of Financial and Performance Audits. Commonly called the "Yellow Book," the standards document addresses both types of audits.

Beginning on Page 8 of the Yellow Book, in Section 1.17, the Comptroller General of the United States begins describing the purpose and content areas of Financial Audits:

> **Financial Audits**
>
> **1.17 Financial audits provide independent assessments of whether entities' reported financial information (e.g., financial condition, results, and use of resources) is presented fairly, in all material respects, in accordance with recognized criteria. Financial audits conducted in accordance with GAGAS include financial statement audits and other related financial audits.**

Subsections "a" and "b" go on to describe in further details on the meaning, objective subject areas and use of financial audits.

Beginning on Page 11 of the Yellow Book, in Sections 1.21 and 1.22, is a description of the purpose and objective content areas of Performance Audits. These sections state:

> **Performance Audits**
>
> **1.21 Performance audits provide objective analysis, findings, and conclusions to assist management and those charged with governance and oversight with, among other things, improving program performance and operations, reducing costs, facilitating decision making by parties responsible for overseeing or initiating corrective action, and contributing to public accountability.**

1.22 Performance audit objectives vary widely and include assessments of program effectiveness, economy, and efficiency; internal control; compliance; and prospective analyses. Audit objectives may also pertain to the current status or condition of a program. These overall objectives are not mutually exclusive. For example, a performance audit with an objective of determining or evaluating program effectiveness may also involve an additional objective of evaluating the program's internal controls.

Key categories of performance audit objectives include the following:

a. Program effectiveness and results audit objectives. These are frequently interrelated with economy and efficiency objectives. Audit objectives that focus on program effectiveness and results typically measure the extent to which a program is achieving its goals and objectives. Audit objectives that focus on economy and efficiency address the costs and resources used to achieve program results.

b. Internal control audit objectives. These relate to an assessment of one or more aspects of an entity's system of internal control that is designed to provide reasonable assurance of achieving effective and efficient operations, reliability of reporting for internal and external use, or compliance with provisions of applicable laws and regulations. Internal control objectives also may be relevant when determining the cause of unsatisfactory program performance. Internal control is a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity.

c. Compliance audit objectives. These relate to an assessment of compliance with criteria established by provisions of laws, regulations, contracts, and grant agreements, or other requirements that could affect the acquisition, protection, use, and disposition of the entity's resources and the quantity, quality, timeliness, and cost of services the entity produces and delivers. Compliance requirements can be either financial or nonfinancial.

d. Prospective analysis audit objectives. These provide analysis or conclusions about information that is based on assumptions about events that may occur in the future, along with possible actions that the entity may take in response to the future events.

The most important aspect of these auditing standards is that they identify significant characteristics of bond and construction practices, in key areas where the CBOC members may have limited prior experience. The standards also identify proper methods and product documents.

The Performance Audit uses objective analysis, findings and conclusions. It provides those in charge of the construction program with:

- **Information to improve program performance and operations;**

- **Information to reduce costs;**
- **Information that will facilitate corrective-action decision making; and**
- **Contributes to Public accountability.**

The Performance Audit is intended to address:

- **Program effectiveness and results;**
- **Internal Controls;**
- **Compliance with other laws, regulations and guidelines; and**
- **Conclusions and analysis of the program's future, based on stated assumptions about potential actions, events, and responses.**

It is of critical importance that the financial and performance audits be conducted according to Government Auditing Standards, so that these legislative requirements are satisfied.

It is clear that citizens of California are to oversee construction projects that are paid for with taxpayer money, projects approved according to the Proposition 39 amendment to the Constitution and the "Strict Accountability in Local School Construction Act of 2000."

A list including twenty common Performance Audit areas, and 75 specific questions, is included in Appendix E. (See "Twenty Question Areas" in Appendix E, on page 83.)

From time to time, depending on a number of factors, CBOCs may feel the need to publish a report to the Public in addition to the annual report.

This may be in an instance where the CBOC discovers or is presented with information related to bond fund expenditures, either positive or negative, that ought to be, in their judgement, communicated to the Public in a special fashion. The goal, of course, is to assure the Public that California students have adequate educational facilities, and that taxpayer money is spent wisely, and in compliance with the law.

Oversight is considered fundamental to making sure that local school bond programs are being administered in an effective, efficient, and economical manner. This function is called out by the California Legislature as essential to the success of the school funding and construction programs.

The Public should believe that bond-based school construction programs are run in a fair and ethical manner, in the Public's interest. Those participating in these programs ought not to act in their own self-interest, above the Public's interest. And in the majority of instances bond-financed construction programs are run in accordance with all legal requirements. Exceptions are rare.

But it is the CBOC's job to monitor the school construction program actions, and look for actions that might not be in the Public's interest and out of compliance with the law.

The mechanics of oversight include holding public meetings with school district and bond program managers, asking questions about the full range of bond program actions to determine

compliance with state and federal laws, using investigative techniques, and then publishing the findings to the Public.

What to Look For

But what precisely should the act of oversight be looking for? What laws should members of the citizens' oversight committee be on the lookout for?

To begin with, the "Strict Accountability in Local School Construction Bonds Act of 2000" includes specific instructions on a set of examination areas that might be explored.

As specified in Education Code Sec. 15278, the following areas are worthy of investigation:

- Examination of the annual Performance and Financial Audits, which must be comply with Government Audit Standards issued by the Comptroller General of the United States;
- Inspection of completed and under-construction school facilities projects;
- Review of the school district's cost-savings efforts, including programs to reduce professional fees, and reduce site preparation costs,
- Reviewing facilities joint use programs;
- Examining facility design efficiencies; and
- Investigating the use of cost-effective and efficient methods of reusable facility plans.

In addition, Education Code Sec. 15282 refers to compliance with statutes that cover Corrupt Practices in Education Code Sections 35233 and 72533. These sections describe how the act of offering anything of value to a member of the governing board of any school district or CBOC, hoping to influence the action of the board or CBOC is a crime, as is the acceptance of anything of value by the board or CBOC member. Any contract or appointment resulting from a corrupt action is void.

CBOC members should be aware of, and be on the lookout for, potential violations of other sections of California's 29 state codes in addition to those included in the Education Code. The "Strict Accountability in Local School Construction Bonds Act of 2000" states that expenditures "…are in strict conformity with the law." (Education Code Sec. 15264(a))

The Penal Code, in Sections 112-117, Chapter 4, "Forging, Stealing, Mutilating and Falsifying Judicial and Public Records and Documents," includes laws making it a felony for a person to obtain or offer a false or forged document in a "public office" within California. Contracts, Engagement agreements, purchase orders, and invoices all may be considered documents, and any school district can easily be thought of as a public office.

There are at least nine sections of the Penal Code which deal with **bribery**, which is generally described as a situation where something of present or future value (or a promise to give such a thing) is given, offered, or taken with a corrupt intent, and given, offered, or taken to unlawfully influence the person to whom it is given in any public or official capacity.

Perjury is yet another crime defined in California's Penal Code. It involves saying something false, or omitting important information that is significant to a question when asked by someone who has a lawful obligation to ask. This law is included in Part 1 of the Penal Code, "Of Crimes and Punishments," Title 7, "Of Crimes Against Public Justice," Chapter 5 "Perjury and Subornation of Perjury," Sections 118 – 131.

It should be noted that some of these statutes are old, and were enacted in the early days of California statehood. The perjury laws, for instance, date from 1872. This means there is considerable case law that has developed over the years, and significant legal and factual nuance that is best parsed by an attorney.

According to the "Strict Accountability in Local School Bonds Construction Act of 2000" CBOCs are to review documents and events, ask questions and get answers, and then report to the Public. As a member of the Public, while also an appointed CBOC member, CBOC members may use this information to form an allegation of improper expenditure of bond funds, which may be forwarded to proper law enforcement officials to be "expeditiously" investigated and prosecuted. CBOC members are not trained investigators or law enforcement officials.

Other state and federal agencies have rules and laws that require compliance as well. Raising billions of dollars in taxpayer funds, and then spending it on school construction projects, is a complicated process.

For instance, the website for the **California Fair Political Practices Commission (FPPC)** says "The mission of the Fair Political Practices Commission is to promote the integrity of state and local government in California through fair, impartial interpretation and enforcement of political campaign, lobbying and conflict of interest laws."

The **Franchise Tax Board (FTB)** is also interested in the flow of billions of dollars of school construction money, so that it can accomplish its purpose, which is, according to its webpage: "Our mission is to help taxpayers file tax returns timely, accurately, and pay the correct amount to fund services important to Californians."

Agencies on the federal level are also interested in the flow of money, from taxpayers to finished school facilities.

The goal of the **Internal Revenue Service** (IRS), according to its website: "The IRS mission is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and to enforce the law with integrity and fairness to all." Violation of IRS regulations can result in Proposition 39 bonds being found to be non-tax-free, a significant issue for bond purchasers.

The **Securities and Exchange Commission (SEC)** is concerned with the process of marketing and selling the billions of dollars of bonds. According to the agency's webpage: "The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. The SEC strives to promote a market environment that is worthy of the public's trust."

School districts are the bond-issuing entities, according to the SEC, and so must comply with a vast array of rules relating to the marketing, packaging and sales of bonds, with continuing disclosure requirements spanning many years.

These are just some of the institutions at all levels of government that have as their purpose monitoring the flow of money that is involved in satisfying the need for adequate school facilities for California students.

Each agency will provide information and guidance about their particular focus. The SEC will provide guidance on the marketing bonds, for instance, and the continuing disclosure information about financial and compliance requirements for outstanding bonds after issuance. The FPPC will provide information on the constraints involved in presenting bond measures to the voters.

Effective oversight may uncover, or be told, things that seem amiss, things that may not fit with the rules government agencies have set up. These incongruencies may be anywhere in the process, from the bond sales phase to the expenditure and construction phase.

While the vast majority of activity will comply with the law, a common sense understanding of human nature would suggest that there are events occurring that do not follow the rules, either on purpose or because of ineptitude. Mistakes happen.

When the oversight process discovers that an incongruency has occurred, it may be the CBOC's duty to inform the Public. It is not necessary to build a case beyond a reasonable doubt, or even assemble facts sufficient to represent the preponderance of evidence. If something happened, and there is information to base a belief upon, the Public has a right to know about it, based on the "Strict Accountability in Local School Bonds Act of 2000."

Remember, the California Legislature enacted the "Strict Accountability in Local School Construction Bonds Act of 2000" so that "vigorous efforts are undertaken" to assure and inform the Public that expenditures of bond funds authorized under this Act comply with the law. The law says that "allegations of waste or misuse of bond funds" which may be made by any member of the Public are to be sent to appropriate law enforcement officials.

It is only through comprehensive oversight and active communications to the Public that the local school construction bond program integrity, both actual and perceived, can be assured.

So, once an incongruency has been identified and investigated with a review of documents, the law and statements, to the point where a reasonable person could base a belief on the information, it becomes time to communicate the results of this oversight to others.

The process of publishing the results to the Public is a key element in oversight. The action of informing others will generate responses, which will add to the facts of the situation being investigated.

It is proper to have the process in mind when beginning the publication process. That way any one response, or lack of a response, from a single information source will not derail the entire process.

A possible communications escalation process might look something like this, and would depend on the seriousness of the issue and CBOC's motivation to "promptly alert the public to any waste or improper expenditure of school construction bond money" (Education Code Sec. 15264(c):

- Meet and review the information with the most-senior district administration official with responsibility for facilities construction;
- Review information with all members of the CBOC, at the next scheduled meeting;
- Meet and review information with members of the school district's governing;
- Begin to build public awareness by publishing the information in traditional and online media, such as local newspapers, Facebook and NextDoor;
- Present the information to members of the city council, for informational purposes only;
- Present the information to the county's Civil Grand Jury;
- Present the information to the County Board of Education, and Superintendent of Schools, to continue to build public awareness;
- Make the members of the Board of Supervisors aware of the situation;
- Present the information to the District Attorney's division of government corruption;
- In extreme situations, where other remedies are not forthcoming, a CBOC member may, as a concurrent member of the Public, explore legal actions, such as filing a "School Bond Waste Prevention Action" (see Education Code Sec. 15284), a Code of Civil Procedure Sec. 526(a) Taxpayer Lawsuit, or a Writ of Mandamus, thereby using the courts to ameliorate the situation.

At each step of this process new information will be gathered, and this new information constitutes an addition to the file that can be presented at any future steps. The body of factual knowledge increases at each step, and requires additional consideration and analyses.

Once the information and belief is documented, others may disagree with the conclusions, or attribute events and results to other causes or intentions. Good oversight will focus on objective facts and events, not subjective opinions.

At the Congressional level, the Project on Governmental Oversight (POGO) joins with other entities to hold training sessions for staffers in how to conduct Congressional oversight. The training program breaks oversight into four elements: 1) the investigative research; 2) the hearing; 3) the written product; and 4) the follow-up plan.

Follow-up is a critical piece of the oversight process, as is informing the Public. Once an inquiry reaches a critical-mass the school district can be asked to issue a press release, and both the CBOC's press release and the district's press release can be posted on the school district's website. Postings and press releases can be issued to traditional and social media, such as newspapers, Facebook and Nextdoor.

The one-room Lincoln Elementary School was built in 1872, and since then has continually served the education needs of 6-13 children living in the rolling coastal hills, dairy farms and ranches of Northern California.

Task Six: Educate the Public using the power of the pen and a communications campaign.

The need for oversight of public monies, those funds collected and spent by the government, is obvious. Human nature suggests that people nearly always make decisions based on their own self-interest, and usually this self-interest aligns with the Public's interest. But occasionally, perhaps rarely, these decisions are contrary to established laws.

We have seen that government administrators, politicians and those who work with government are sometimes caught breaking the laws. A simple Internet search yields many accounts of malfeasance, and there are over 50 incidents of improper actions listed on the website of the California Association of Bond Oversight Committees

For example, a 2022 investigation by Flatwater Free Press reported that 14 city and village clerks were charged with theft or violating public resources laws over the previous decade. Those clerks, plus another who took money but wasn't charged, stole an estimated $1.7 million from 17 small towns in Nebraska.

America has a long and well-established tradition of setting up government oversight functions, at all levels of government, dating back to our country's founding.

The legislated roles of the various Proposition 39 Citizens' Bond Oversight Committee (CBOC) members, specified in the enabling legislation, may tend to promote a lack of comprehensive oversight.

Committee members are often parents with children attending district schools, and so in addition to the desire to "give back to the community," the CBOC members enjoy the added face-time with key members of the school district's administration. Questions about current issues involving their children are asked during meetings, and naturally the administrators give answers, spending considerable meeting time on non-oversight discussions.

Sometimes CBOC members are appointed because they are visible members of the business or senior citizens communities. These committee members often want to be seen as "someone who serves the community," rather than someone who does the hard and often unpopular work of uncovering fraud, waste, and abuse of Public funds.

And sometimes the school district administration sees the CBOC as a public relations program. The administration presents all information in a positive fashion, hoping that the committee members will walk away from meetings with happy faces and positive attitudes towards the district's construction programs, and then pass this positive information and attitude along to other community members.

Oversight Education and Training

The likelihood of inadequate oversight and public reporting is increased when there is no education or training on bond financing, facility construction principles, or government oversight whistle-blowing practices. "Vigorous" bond oversight conducted by an "independent citizens' oversight committee," as written in Education Code Sections 15264 and 15278, are not actions those involved in spending hundreds of millions of dollars might necessarily desire.

In the realm of local politics, perception is reality. This means that an elected school board and district administration's ability to construct a positive perception in the mind of the Public is a primary goal. By showing pretty pictures of new school facilities the administration can shape the perception that all is well with the district's construction programs.

Whether this perception is based on facts, or on the desires and opinions of the many participants in the facilities construction effort, is another matter. Often facts are missing because experience is missing.

School administrators running the programs may have extensive experience in education administration, but not a clue as to the "best practices" in complex construction programs valued in the tens of millions to billions of dollars. Instead of having benchmarks and industry practices to review, they accept the opinion of those getting paid to do the work. This may lead to false conclusions on the quality, efficiency and effectiveness of the construction programs.

Independent CBOCs, however, can shape their own message. Politically speaking, this means creating an informative message to the Public that reflects the actual construction program facts. This message might differ from the message told by school district administration.

A Historical Communications Campaign

One of the world's most impactful communications campaigns occurred when much of North America had yet to be explored. In 1775 there were about two million residents of the British North American Colonies, and a single small book, "Common Sense" by Thomas Paine, was published in January of 1776. In the following three months it sold 100,000 copies, and helped to shape public opinion regarding the government of King George III and the British Empire. During the American Revolution it is claimed that over 500,000 copies were sold, counting unauthorized copies.

Almost all of the residents of the 13 colonies were busy with their lives, providing food, clothing and shelter for their families. As English citizens, they paid little attention to the actions of government, a government that was at the time the strongest in the world.

Much of the success of Paine's 47-page document is attributed to its plain, understandable language. It used examples that everyone understood, and made the conceptual elements of declaring independence from England real. "Common Sense" appealed to fundamental human emotions.

"Common Sense" uses an elementary four-part format. This can be described as:

1) Explain the problem situation and consequences;
2) Criticize those that caused the problem situation;
3) Propose a specific solution; and
4) Promote the solution and compliment those acting to correct the problem situation, encouraging those who potentially can act to correct the situation.

This book brought to the general public the ideas being discussed by the political and social elites of the time. It informed the Public in a way that resulted in a dramatic increase in support for the American Revolution.

One of the most important jobs of the CBOC is to inform the Public, just as "Common Sense" did. While a lot has changed in 250 years, the same principles apply today.

While communicating with the Public is the goal, it will be those few members of the school district administration, and those who work with the school districts in bond financing and school facility construction, who will pay closest attention.

And as with all communications programs, perception becomes reality. Those that pay attention to a school district will read what is available in traditional and social media, and form conclusions based on what they see.

So, to have the largest impact, communicating with the Public should be part of a campaign. Today we are talking about communication campaigns using both traditional and social media.

Contemporary Communication Campaigns

With traditional media, we are primarily talking about local and regional newspapers. These can be daily, weekly or monthly periodicals. Typical message formats for these publications include a Letter-to-the Editor, with 150 words often set as the length limit, and a Guest Commentary, which often has a word limit of 650 words.

Traditional media also includes direct mail campaigns, programs that deliver a hard-copy letter, flyer or brochure to each postal patron or property parcel within the school district's service area. Some periodicals are based on completely saturating a community, relying only on advertising revenue and not subscriptions. These subscription-free periodicals are also effective vehicles to inform the public.

Direct mail or subscription-free periodicals are much more flexible as to message format and length, and can include multiple pages, colorful graphics and pictures in the body of the periodical or as an inserted additional document.

The key to compressing a complex message into a few words and sentences is thoughtful brevity and creativity. It requires considering how the reader will react to each word and phrase, and carefully constructing a written piece that accomplishes the desired objective.

There is a story, perhaps a legend, that Ernest Hemingway was once challenged to write a complete story in just six words. His product is a classic: "For sale: baby shoes, never worn." It is a creative and brief complete story.

Social media is another avenue used to inform the Public. Facebook, NextDoor and Twitter all provide community-specific and location-specific methods of informing the Public.

On social media messages can be as short as a few sentences or as long as a Guest Commentary. The frequency of postings can vary as well, with once per week often selected as a desired frequency. And in most cases communication can be continuous, over weeks or months. It all depends on the energy and passion of the person(s) conducting oversight, and informing the Public.

The still-standing Columbia School is today part of Columbia State Historic Park. The lot was purchased and plans selected in February, 1860, with the promised delivery date of July 1 of that year. The school opened on October 8, 1860.

In-depth: The "Strict Accountability in Local School Construction Bonds Act of 2000"

Following the passage of the Proposition 39 ballot initiative (official title: "School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements. Initiative Constitutional Amendment and Statute") the California Legislature enacted laws to implemented the will of the people.

The principal effects of the changes brought about by this ballot measure were to reduce the approval threshold on local school construction borrowings to just 55% from two-thirds, and to require school districts to comply with a series of citizen oversight requirements.

These new oversight requirements are designed to give taxpayers insight into the process of spending the proceeds of bond borrowings, money that is paid back through property tax assessments over extended periods of time. These oversight actions are intended to hold school districts accountable for how hundreds of billions of dollars are spent.

In addition to amending Article XIIIA, Section 1, of the California Constitution, the changes were primarily additions to the Education Code, sections 15264 through 15288. The resulting new Education Code sections, named the "Strict Accountability in Local School Construction Bonds Act of 2000," are organized into three broad Articles.

A New Law

"Article 1. General Provisions" includes sections 15264 through 15276. "Article 2. Citizens' Oversight Committee" runs from section 15278 through 15282, and "Article 3. Bond Accountability" includes sections 15284 through 15288.

The very first section of the law is something of a preamble to the technical details that follow. Education Code Sec. 15264 states, in clear language, what the new law is supposed to accomplish.

> ***"It is the intent of the Legislature that all of the following are realized:***
>
> ***(a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in strict conformity with the law.***
>
> ***(b) Taxpayers directly participate in the oversight of bond expenditures.***
>
> ***(c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.***
>
> ***(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures.***

The law that enables oversight of a new category of bonds attaches serious strings to the lowered passage threshold. This first section includes "vigorous" and "vigorously" to describe how taxpayers are to examine school district bond construction programs. This is significant, as it implies that the oversight function must be comprehensive, thorough, and meaningful.

This preamble section also describes a role for the judicial branch of government, when construction spending does not comply with California laws. In the law's last section, the Legislature describes as "expeditiously" how it intends law enforcement to handle the investigation and prosecution of any violation of California laws.

"Article 1. General Provisions," sections 15266 through 15276, deals with the practical aspects of a construction bond program for different types of school districts. Duties and activities of the various parties are stated, and the definitions of words and phrases are presented, including references to other Education Code sections and passages of the California Constitution.

"Article 2. Citizens' Oversight Committee," sections 15278 through 15282, gets into the purpose, structure, and activities of the school district and the citizens' bond oversight committee (CBOC) by spelling out certain "shall do, no exception" activities that are required by law.

First, once the bond measure is passed by the voters, the school district **"shall"** create the CBOC within 60 days, according to specifications included in the law.

This CBOC **"shall"** take an active role in investigating bond money spending, and report its findings to the Public. The law offers suggestions on areas to explore, but does not says that there are any limitations on what the CBOC can investigate.

All activities and information reviewed by the CBOC **"shall"** be open to the Public, and become a public record, just as the proceedings of the school district are open to the Public and a matter of public record. Minutes of meetings and any reports reviewed or discussed by the CBOC **"shall"** be public, and available on an Internet website maintained by the school district.

The CBOC **"shall"** report to the Public at least once each year, and as often as it likes or feels necessary.

The law specifies the makeup of the CBOC, describing members selected from a variety of community groups. It also prohibits anyone employed by the school district or doing business with the school district from being appointed to the CBOC. Appointed members of the CBOC are subject to the same conflict of interest prohibitions as are the elected school district board members.

The law states that the school district is responsible for the costs associated with bond oversight and the running of the CBOC. Section 15280 states "The governing board of the school district shall, without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee."

Conceiving, proposing, and organizing the construction of school facilities is not a simple endeavor. The school district understands that raising funds is part of the school district's core activities, and is paid for out of the school district's general operating funds. Because a school district took advantage of the lowered voter approval level of Proposition 39 bonds, it must incorporate oversight expenses into these core business expenses, according to the law.

Common sense, as well as academic and field research, indicates that determining the scope and subject of oversight areas, as well as the determination of what is necessary to do its job, is up to the CBOC. It is not the responsibility of the elected school district legislative body to set limits in any of these areas.

It is interesting to note that the law states clearly that the elected school board is required to appoint the CBOC, but it offers limited specific instructions on the removal of any appointees.

In its entirety, the "Strict Accountability in Local School Construction Bonds Act of 2000" includes 3,409 words, counting the headings. The California Legislature used the word **"shall"** 49 times when drafting and amending the law. Fifty-three percent (53%) of the times **"shall"** is used are in "Article 2, Citizens' Oversight Committee."

The use of this word, ***shall,*** removes discretion that might otherwise be contained in the execution of a law. The elected school board is required by law to do certain things, to follow certain rules, and legal consequences may result from failure to obey the law. The same

principle applies to CBOCs, in their role as independent oversight committees appointed under legal authority by the elected school board.

The third and final article includes Education Code sections 15284 through 15288. "Article 3, Bond Accountability" begins to spell out certain legal avenues of redress, should the school district act contrary to the laws of California. These legal actions are available to "…a citizen residing in the school or community college district who is assessed and is liable to pay an ad valorem tax on real property … or has paid an ad valorem tax …"

Essentially, a taxpayer can use the courts to stop improper expenditure of bond proceeds, and members of the CBOC are taxpayers. Education Code Sec. 15284(a).

School district administrators, like ordinary citizens, are charged with obeying the laws of California. These laws are written down in 29 codes, authored and amended over time by the elected members of the California Assembly and Senate, and then typically signed into force by the Governor.

Specific code sections are mentioned in Article 3, including provisions of the California Constitution and other sections of the Education Code. But Article 3 refers to "the law" as well, making clear that the CBOC is to examine the school construction bond program's compliance with all of California's laws.

Article 3 details a specific legal remedy available to the CBOC as members of the public who pay taxes within the school district. This legal recourse is called a "School Bond Waste Prevention Action."

In Education Code Section 15286, Article 3 states that the school district is required to complete annual Financial and Performance Audits of construction bond programs, and to provide them to the CBOC at the same time the elected school board receives them. These audits are to be conducted in conformity "…with the Government Auditing Standards issued by the Comptroller General of the United States for financial and performance audits."

In the law's final section, the California Legislature describes another aspect of its intent, just as it did in the first section:

> ***"It is the intent of the Legislature that upon receipt of allegations of waste or misuse of bond funds authorized in this chapter, appropriate law enforcement officials shall expeditiously pursue the investigation and prosecution of any violation of law associated with the expenditure of those funds."***

The law states that the legal remedy described does not exclude other provisions of California law, and it describes the provisions of the "School Bond Waste Prevention Action" as existing in addition to other rights and benefits possessed by California citizens. This legal action would rise to the top of any court's calendar and take "special precedence" over other civil cases a court might be hearing.

And because any action brought by an individual citizen would benefit all citizens, it specifies that if the legal action is successful in impacting the waste or abuse of bond funds, a court may award attorney fees to the person bringing the suit.

In summary, it is clear that the Legislature was serious about citizen oversight when it enacted the "Strict Accountability in Local School Construction Bonds Act of 2000," and when it amended the law over the years.

The Legislature used the word "vigorous" to describe how it wanted oversight to take place. It created sometimes exacting instructions on how the oversight was to occur, and specified standards to which oversight was to comply.

The full text of the "Strict Accountability in Local School Construction Bonds Act of 2000" is included in Appendix C beginning on page 75.

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Becoming an Effective Watchdog provides an aspirational orientation to oversight practices and communications with the Public, to better accomplish the goal of increasing citizen participation in local government and improving legislative compliance. It is not legal advice.

The Columbia Schoolhouse in Columbia, California, is the state's oldest (1860) two-story brick school.

Appendix – *Becoming an Effective Watchdog*

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Appendix A - Authorities, Interviews, and Related Links

Interviews: Jack Weir, Chairman & Co-Founder, California Association of Bond Oversight Committees; Nick Marinovich, former President and Director of the California Association of Bond Oversight Committees.

Related Links: Congressional Oversight Manual A fundamental objective of the Congressional Oversight Manual is to assist members, committees, and legislative staff in carrying out this vital legislative function. It is intended to provide a broad overview of the procedural, legal, and practical issues that are likely to arise as Congress conducts oversight. The Manual discusses important legal principles that have developed around Congress's oversight practice.
https://crsreports.congress.gov/product/pdf/RL/RL30240/37

Legislative Oversight Handbook (ca.gov) Oversight in the California State Assembly gives committees a means to improve the lives of Californians by holding agencies and others accountable.
https://www.assembly.ca.gov/sites/assembly.ca.gov/files/Publications/california_assembly_oversight_handbook_2017.pdf

Online Tutorials • Levin Center (levin-center.org) The Levin Center at Wayne State University Law School was established to carry on the legislative oversight legacy and public vision of U.S. Senator Carl Levin, who represented Michigan in the U.S. Senate for 36 years, longer than any other Michigan senator. The Levin Center is headquartered at Wayne State University Law School in Detroit with an office in Washington, D.C. https://levin-center.org/congressional-lawmakers/online-tutorials/

About | Project On Government Oversight (POGO) The Project On Government Oversight (POGO) is a nonpartisan independent watchdog that investigates and exposes waste, corruption, abuse of power, and when the government fails to serve the public or silences those who report wrongdoing. https://www.pogo.org/

Annual Summary of Findings and Recommendations - 2020-21 (ca.gov) The Senate Bill 1 (Beall, Chapter 5, Statutes of 2017), also known as the Road Repair and Accountability Act, created the Independent Office of Audits and Investigations and the position of Inspector General to ensure the California Department of Transportation (Caltrans) and external entities that receive state and federal transportation funds are spending those funds efficiently, effectively, economically, and in compliance with applicable state and federal requirements.
https://ig.dot.ca.gov/-/media/ig-media/documents/reports/ioai_annual_summary_20-21_ada.pdf

California's education system has seen substantial policy shifts over the past decade potentially benefiting the state's 6.2 million students. **Getting Down to Facts II (GDTF II)** is an in-depth research report that serves as a "state of the state," with the goal of providing a common set of facts to inform discussions and education policy. https://gettingdowntofacts.com/

"Trust in Federal Government Branches Continues to Falter" (gallup.com)
https://news.gallup.com/poll/402737/trust-federal-government-branches-continues-falter.aspx?utm_source=alert&utm_medium=email&utm_content=morelink&utm_campaign=syndication

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Appendix C - Strict Accountability in Local School Construction Bonds Act of 2000

Education Code Sections 12564 - 12588

ARTICLE 1. General Provisions [15264 - 15276]

15264.
It is the intent of the Legislature that all of the following are realized:
(a) Vigorous efforts are undertaken to ensure that the expenditure of bond measures, including those authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, are in strict conformity with the law.
(b) Taxpayers directly participate in the oversight of bond expenditures.
(c) The members of the oversight committees appointed pursuant to this chapter promptly alert the public to any waste or improper expenditure of school construction bond money.
(d) That unauthorized expenditures of school construction bond revenues are vigorously investigated, prosecuted, and that the courts act swiftly to restrain any improper expenditures.

15266.
(a) As an alternative to authorizing and issuing bonds pursuant to Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), the governing board of a school district, community college district, or a school facilities improvement district may decide, pursuant to a two-thirds vote and subject to Section 15100 to pursue the authorization and issuance of bonds pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution. An election may only be ordered on the question of whether bonds of a school district, community college district, or a school facilities improvement district shall be issued and sold pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution at a primary or general election, a regularly scheduled local election at which all of the electors of the school district, community college district, or school facilities improvement district, as appropriate, are entitled to vote, or a statewide special election.
(b) Upon adopting a resolution to incur bonded indebtedness pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution and after the question has been submitted to the voters, if approved at the election, the bonds shall be issued pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and this chapter, and the governing board may not, regardless of the number of votes cast in favor of the bond, subsequently proceed exclusively under Chapter 1 (commencing with Section 15100) or under Chapter 2 (commencing with Section 15300), as appropriate. Where not inconsistent, the provisions of Chapter 1 (commencing with Section 15100) or Chapter 2 (commencing with Section 15300), as appropriate, shall apply to this chapter.

15267.
(a) Two or more small school districts that have had the issuance of bonds authorized by the voters pursuant to this chapter may form a joint powers authority in accordance with the provisions of Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code for the purpose of issuing or selling those bonds for raising money for the purposes authorized.
(b) A joint powers authority described in subdivision (a) shall be deemed a school district for purposes of this chapter only and may exercise all authority granted to a school district under this chapter under the conditions imposed by this chapter for the issuance and sale of bonds.
(c) Each small school district shall be responsible for its respective voter-approved bonds pursuant to this chapter. A joint powers authority formed pursuant to this section shall serve the purpose of sharing

administrative costs associated with the issuance and sale of bonds and shall not otherwise affect the terms of the respective voter-approved bonds.
(d) For purposes of this section, "small school district" means a school district with fewer than 2,501 units of average daily attendance.

15268.
The total amount of bonds issued, including bonds issued pursuant to Chapter 1 (commencing with Section 15100), shall not exceed 1.25 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred by a school district pursuant to this chapter, at a single election, would not exceed thirty dollars ($30) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution. For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987–88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987–88 fiscal year, and multiplying that result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll.

15270.
(a) Notwithstanding Sections 15102 and 15268, any unified school district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a unified school district, would not exceed sixty dollars ($60) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.
(b) Notwithstanding Sections 15102 and 15268, any community college district may issue bonds pursuant to this article that, in aggregation with bonds issued pursuant to Chapter 1 (commencing with Section 15100), may not exceed 2.5 percent of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. The bonds may only be issued if the tax rate levied to meet the requirements of Section 18 of Article XVI of the California Constitution in the case of indebtedness incurred pursuant to this chapter at a single election, by a community college district, would not exceed twenty-five dollars ($25) per year per one hundred thousand dollars ($100,000) of taxable property when assessed valuation is projected by the district to increase in accordance with Article XIII A of the California Constitution.
(c) In computing the outstanding bonded indebtedness of any unified school district or community college district for all purposes of this section, any outstanding bonds shall be deemed to have been issued for elementary school purposes, high school purposes, and community college purposes, respectively, in the respective amounts that the proceeds of the sale of those outstanding bonds, excluding any premium and accrued interest received on that sale, were or have been allocated by the governing board of the unified school district or community college district to each of those purposes respectively.
(d) For purposes of this section, the taxable property of a district for any fiscal year shall be calculated to include, but not be limited to, the assessed value of all unitary and operating nonunitary property of the district, which shall be derived by dividing the gross assessed value of the unitary and operating nonunitary property within the district for the 1987–88 fiscal year by the gross assessed value of all unitary and operating nonunitary property within the county in which the district is located for the 1987–

88 fiscal year, and multiplying the result by the gross assessed value of all unitary and operating nonunitary property of the county on the last equalized assessment roll. In the event of the unification of two or more school districts subsequent to the 1987–88 fiscal year, the assessed value of all unitary and operating nonunitary property of the unified district shall be deemed to be the total of the assessed value of the taxable property of each of the unifying districts as that assessed value would be determined under Section 15268.
(e) For the purposes of this article, "general obligation bonds," as that term is used in Section 18 of Article XVI of the California Constitution, means bonds of a school district or community college district the repayment of which is provided for by this chapter and Chapter 1 (commencing with Section 15100) of Part 10, and includes bonds of a school facilities improvement district the repayment of which is provided for by this chapter and Chapter 2 (commencing with Section 15300).

15271.
The governing board of a school district or community college district may proceed pursuant to this chapter on behalf of a school facilities improvement district that is created by and under the exclusive authority of the school district or community college district and act on behalf of the school facilities district as provided pursuant to Chapter 2 (commencing with Section 15300).

15272.
In addition to the ballot requirements of Section 15122 and the ballot provisions of this code applicable to governing board member elections, for bond measures pursuant to this chapter, the ballot shall also be printed with a statement that the board will appoint a citizens' oversight committee and conduct annual independent audits to assure that funds are spent only on school and classroom improvements and for no other purposes.

15274.
If it appears from the certificate of election results that 55 percent of the votes cast on the proposition of issuing bonds pursuant to subdivision (b) of Section 18 of Article XVI of the California Constitution are in favor of issuing bonds, the governing board shall cause an entry of that fact to be made upon its minutes. The governing board shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

15276.
Notwithstanding any other provision of law, a county board of education may not order an election to determine whether bonds may be issued under this article to raise funds for a county office of education.

ARTICLE 2. Citizens' Oversight Committee [15278 - 15282]

15278.
(a) If a bond measure authorized pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution is approved, the governing board of the school district or community college shall establish and appoint members to an independent citizens' oversight committee, pursuant to Section 15282, within 60 days of the date that the governing board enters the election results on its minutes pursuant to Section 15274.

(b) The purpose of the citizens' oversight committee shall be to inform the public concerning the expenditure of bond revenues. The citizens' oversight committee shall actively review and report on the

proper expenditure of taxpayers' money for school construction. The citizens' oversight committee shall advise the public as to whether a school district or community college district is in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution. The citizens' oversight committee shall convene to provide oversight for, but not be limited to, both of the following:

(1) Ensuring that bond revenues are expended only for the purposes described in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Ensuring that, as prohibited by subparagraph (A) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, no funds are used for any teacher or administrative salaries or other school operating expenses.

(c) In furtherance of its purpose, the citizens' oversight committee may engage in any of the following activities:

(1) Receiving and reviewing copies of the annual, independent performance audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) Receiving and reviewing copies of the annual, independent financial audit required by subparagraph (C) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(3) Inspecting school facilities and grounds to ensure that bond revenues are expended in compliance with the requirements of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(4) Receiving and reviewing copies of any deferred maintenance proposals or plans developed by a school district or community college district, including any reports required by Section 17584.1.

(5) Reviewing efforts by the school district or community college district to maximize bond revenues by implementing cost-saving measures, including, but not limited to, all of the following:

(A) Mechanisms designed to reduce the costs of professional fees.

(B) Mechanisms designed to reduce the costs of site preparation.

(C) Recommendations regarding the joint use of core facilities.

(D) Mechanisms designed to reduce costs by incorporating efficiencies in school site design.

(E) Recommendations regarding the use of cost-effective and efficient reusable facility plans.

15280.

(a) (1) The governing board of the district shall**,** without expending bond funds, provide the citizens' oversight committee with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the citizens' oversight committee.

(2) The governing board of the district shall provide the citizens' oversight committee with responses to any and all findings, recommendations, and concerns addressed in the annual, independent financial and performance audits required by subparagraphs (C) and (D) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution within three months of receiving the audits.

(b) All citizens' oversight committee proceedings shall be open to the public and notice to the public shall be provided in the same manner as the proceedings of the governing board of the

district. The citizens' oversight committee shall issue regular reports on the results of its activities. A report shall be issued at least once a year. Minutes of the proceedings of the citizens' oversight committee and all documents received and reports issued shall be a matter of public record and be made available on an Internet Web site maintained by the governing board of the district.

15282.

(a) The citizens' oversight committee shall consist of at least seven members who shall serve for a minimum term of two years without compensation and for no more than three consecutive terms. While consisting of a minimum of at least seven members, the citizens' oversight committee shall be comprised, as follows:

(1) One member shall be active in a business organization representing the business community located within the school district or community college district.

(2) One member shall be active in a senior citizens' organization.

(3) One member shall be active in a bona fide taxpayers' organization.

(4) For a school district, one member shall be the parent or guardian of a child enrolled in the school district. For a community college district, one member shall be a student who is both currently enrolled in the community college district and active in a community college group, such as student government. The community college student member may, at the discretion of the governing board of the community college district, serve up to six months after his or her graduation.

(5) For a school district, one member shall be both a parent or guardian of a child enrolled in the school district and active in a parent-teacher organization, such as the Parent Teacher Association or schoolsite council. For a community college district, one member shall be active in the support and organization of a community college or the community colleges of the district, such as a member of an advisory council or foundation.

(b) An employee or official of the school district or community college district shall not be appointed to the citizens' oversight committee. A vendor, contractor, or consultant of the school district or community college district shall not be appointed to the citizens' oversight committee. Members of the citizens' oversight committee shall, pursuant to Sections 35233 and 72533, abide by the prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code.

ARTICLE 3. Bond Accountability [15284 - 15288]

15284.

(a) An action to obtain an order restraining and preventing any expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter pursuant to paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution and subdivision (b) of Section 18 of Article XVI of the California Constitution may be maintained against any officer, agent, or other person acting on behalf of, that school district or community college district, by a citizen residing in the school or community college district who is assessed and is liable to pay an ad valorem tax on real property within the school or community college district, or who has paid an ad valorem tax on real property within the school or community college district within one year before the commencement of the action if it appears by the complaint or affidavits that any of the following conditions are present:

(1) An expenditure of funds received by a school district or community college district through the sale of bonds authorized by this chapter is for purposes other than those specified in paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.

(2) The expenditure is not in compliance with paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution.
(3) That an expenditure in violation of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution will be made or will continue to be made during the litigation that would produce waste or great or irreparable injury.
(4) The governing board of a school district or community college has willfully failed to appoint the citizens' oversight committee in violation of the requirements of Section 15278.
(b) An action brought pursuant to this section shall take special precedence over all civil matters on the calendar of the court except those matters granted equal precedence by law.
(c) The rights, remedies, or penalties established by this section are cumulative to the rights, remedies, or penalties established under other laws, including subdivision (a) of Section 526 of Chapter 3 of Title 7 of Part 2 of the Code of Civil Procedure.
(d) If an order is obtained to restrain and prevent an expenditure of funds pursuant to subdivision (a), a court may award attorneys' fees pursuant to Chapter 6 (commencing with Section 1021.5) of Title 14 of Part 2 of the Code of Civil Procedure.
(e) The action authorized by this section shall be known as a "School Bond Waste Prevention Action."

15286.
Consistent with the provisions contained in subparagraphs (C) and (D) of paragraph (3) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the required annual, independent financial and performance audits for the preceding fiscal year shall be submitted to the citizens' oversight committee established pursuant to Section 15278 at the same time they are submitted to the school district or community college district, no later than March 31 of each year. These audits shall be conducted in accordance with the Government Auditing Standards issued by the Comptroller General of the United States for financial and performance audits.

15288.
It is the intent of the Legislature that upon receipt of allegations of waste or misuse of bond funds authorized in this chapter, appropriate law enforcement officials shall expeditiously pursue the investigation and prosecution of any violation of law associated with the expenditure of those funds.

Appendix D - Fraud, Waste and Abuse: Indicators and Examples

Office of Inspector General, Environmental Protection Agency

Fraud is a false representation about a material fact. It is any intentional deception designed to unlawfully deprive the United States, the EPA or the CSB of something of value or to secure for an individual a benefit, privilege, allowance or consideration to which he or she is not entitled.

Examples of Fraud Indicators (31):

• Unexplained entries of altered records
• Unusually large amounts of payments in cash
• Inadequate or missing documentation
• Delays in producing requested documentation
• Non-serial number transactions
• Unauthorized transactions
• Unusual patterns and trends in contracting and procurement
• Unrealistic contract prices
• Increase in claims for reimbursement
• Offers of gifts, money, or gratuities from contractors, grantees, or others dealing with the government
• Photocopies of documents where it is difficult to detect alteration
• False or misleading information
• Missing approval signatures
• Lack of separation of duties
• Discrepancies in handwriting
• Lack of or out-of-date written policies and procedures, including those safeguarding assets
• Lack of communication and/or support for ethical standards by management
• Uncharacteristic behavior, including a person living beyond his/her means
• Unaccountable funds
• Uncharacteristic willingness to settle claims
• Fictitious vendors
• Unauthorized personnel with access
• Overly complex organizational structure
• High turnover rate
• Reassignment of personnel
• Termination of key personnel
• "Missing" files, reports, data, and invoices (both electronic and paper)
• Missing, weak, or inadequate internal controls
• Management override of key internal controls
• Inadequate monitoring by management
• A history of impropriety

Waste involves the taxpayers not receiving a reasonable value for money in connection with any government-funded activities due to an inappropriate act or omission. Most waste does not

involve a violation of law; rather, waste relates primarily to mismanagement, inappropriate actions and inadequate oversight.

Examples of Waste Indicators (6):

• The extravagant, careless, or needless expenditure of government funds.
• Programmatic or operational mismanagement.
• Consumption of government property that results from deficient practices, systems, controls, or decisions.
• Abuse of resources to the detriment (or potential detriment) of the U.S. government.
• Incurring unnecessary costs resulting from inefficient or ineffective practices, systems, or controls.
• The term also includes improper practices not involving prosecutable fraud.

Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary business practice given the facts and circumstances. Abuse also includes misuse of authority or position for personal financial interests or those of an immediate or close family member or business associate. Abuse does not necessarily involve fraud or violation of laws, regulations or provisions of a contract or grant agreement.

Examples of Abuse Indicators (6):

• Creating unneeded overtime.
• Requesting staff to perform personal errands or work tasks for a supervisor or manager.
• Performing tasks related to a personal business during working hours and on government equipment.
• Misusing the official's position for personal gain (including not only the official's personal interests but the interests of family members or others).
• Making travel choices that are contrary to existing travel policies or are unnecessarily extravagant or expensive.
• Making procurement of vendor selections that are contrary to existing policies or are unnecessarily extravagant or expensive.
https://www.epa.gov/sites/default/files/2019-07/documents/_epaoig_20190717_fraudwasteandabuse-indicatorsandexamples.pdf

Appendix E - Twenty Performance Audit Question Areas

1. District and Professional Services Staffing Plan for the Bond Program: What in-house and consulting staff are dedicated to Measure-B projects, and how does this compare to the staffing levels and expenditures of other Prop-39 bond programs in other school districts?

2. Design and Construction Schedules Cash Flow Analysis: How does the district track the schedule of available revenue and expenditures for all projects, and plan each building project in accordance with the availability of funds?

3. Design and Construction Budget Management: How does the district develop and adhere to design and construction budgets on Measure-B projects? How are contractor expenditures reviewed and approved? How does the district prevent excessive charges and over-payments? How does the district validate progress and percent complete? Does the district reconcile actual projects to projects approved by the Board of Trustees, on the approved facilities master plan?

4. Bidding and Procurement Procedures: Are bidding and procurement controls and procedures in place for the application of competitive and fair general contracting and subcontracting practices that prevent excessive expenditures? What policies are in place for contractual pricing and change order pricing increases to competitively bid projects? What policies and practices are in place for bid and contractor selection procurement controls? Do the bidding and award of construction projects comply with the California school construction State requirements, the Public Contracting Code, and State and other relevant laws and regulations? Does change order documentation comply with selected Public Contracting Code, California school construction State requirements, and other regulations? Are there controls and activities to manage change orders in place? Do contracts provide for allowable charges and reimbursable costs related to change orders? Are policies and procedures covering the review and approval of contractor change orders in place? Is change order cause, responsibility, and pricing recorded? Do policies and procedures to verify whether documentation exists prior to approval of change orders exist, and are the required approvals received prior to approval?

5. Procurement Fraud Prevention and Detection Controls: What controls does the district have in place to prevent and detect procurement fraud? Has the District implemented an ethics policy, reporting protocols, staff screening requirements, consequences, training, and escalation procedures to prevent and detect fraud? Are duties segregated in a manner that prevents unauthorized obligations and payments? Is there a process in place to monitor controls implemented to identify, report, and address significant procurement anomalies? Are methods in place to verify key reports used for key construction program management decisions for accuracy and completeness?

6. Bond Program Master Planning and Reporting: Does the district have a Master Planning process in place, and how is the performance effectiveness of program management processes and controls covering planning, design, and construction projects measured? What policies, procedures, and practices are in place to ensure key deliverables and approvals occur as projects progress? Are bond program reporting and plan design, as well as control processes for specific

projects, from the start of the design phase to project closeout, in place? How are the current facilities master plan, organizational structure, and controls to ensure that there is an integrated plan, communicated among stakeholders including but not limited to district management, the citizens oversight committee, and the Board?

7. Cost, Schedule, Budgetary Management, and Reporting Controls Implementation: Are processes in place and reviewed by management for the management of cost, schedule, and budgetary reporting? Does this include a review of the following processes and control activities? a) Budget variance analysis/cost reporting by cost code detail and summary, including analysis of budget, changes, spending, commitments, forecast, and variance to budget; b) Project schedule with well-defined milestones that match project requirements; c) Compliance with project funding legal requirements; c) Comparison of project and district accounting records; d) Change control guidelines and senior management approval for initial authorization and scope changes; e) Cost and schedule, budget and actual analysis; f) Documentation of test results and quality inspections; g) Billing review and spending variance approvals; and h) Spending review and approval for proper coding.

8. Claim Avoidance and Control Procedures: Are procedures used to limit the number of construction project-related claims filed against the district? Are steps taken to effectively communicate potential claims and mitigate claims risk?

9. Material Specifications: Does the district have and use a standardized items list and specifications for Measure-B procurement?

10. Cost Benefit and Value Engineering Analyses: Does the district have cost-benefit and value-engineering analysis procedures and documentation? Are they used? Are these analyses conducted to determine if the requirements of the project or equipment can be obtained at a lower price or for a better value, specifically when weighing cost, time, and function? Is value determined by objective criteria that may include price, features, functions, lifecycle costs, and other criteria deemed appropriate by the district? How do the district's practices compare to guidelines recommended by SAVE International®?* Has the district determined a cost threshold for the application of value engineering in practical matter?

11. Maintenance of District Assets Funded by the Local Bond and Warranty Conditions Compliance: Does the district have a policy and practice for maintaining a list for all assets incorporated into school site construction, and is the list of warrantied items complete and accurate?

12. Implementation of Schedule Quality, Scope, and Performance Management Controls: Are there Bond Program goals and objectives in place, and how well are the goals and objectives communicated by District and contractor personnel? What tools and support processes exist for the design, construction, and close-out project phases? How do these tools and support processes compare to other efficient projects as well as good practices applied by similar organizations?

13. Change Order Management and Controls Application: Does change order documentation was exist, and does it comply with the Public Contracting Code, school construction State

requirements, and other regulations? What controls and activities to manage change orders exist? What are the allowable charges and reimbursable costs related to change orders? Are policies and procedures covering the review and approval of contractor change orders in place? Does documentation existed prior to approval of change orders, and are required approvals applied?

14. Contractor Billing Compliance Controls: Are processes in place to review and approve contractor charges to prevent excessive charges or overpayments? Are charges matched with actual performance and work completion, contracted services delivered, with payments in accordance with compensation terms, and is billing reconciled to contract terms?

15. Project Close-Out Controls: What are the district's policies, procedures, and practices to close out projects, and are they in compliance with contract requirements? Are there any standardized checklists, procedures, retention policies, and contract terms and conditions used? What procedures have been implemented to identify the parameters for contractor performance? How do the district's close-out procedures compare to good practices applied by similar organizations? What controls are in place to obtain unconditional contractor lien release and ensure unresolved claims are not pending prior to final payment?

16. Refunding of Outstanding Bonds: Do the Measure-B bond program structure, funding requirements, refunding costs policies, comply with refunding requirements, and other key factors that impact potential refunding of Bond funds? How do the refunding plans compare to good practices used by other similar organizations?

17. Timeliness of Payments: Does the District pay vendors within payment terms timeframes? Do general contractors withhold payments to subcontractors, materials suppliers, and other vendors? Do contracts include specific language on payment terms and comply with California's prompt payment laws?

18. Local Participation Requirements: Does the Measure-B program comply with specific Board Policies such as local business or Minority/Women Owned Business participation? Does the District have tracking controls related to Board policies for local participation requirements? Have the District's reported results, if any, been validated for inclusion of current, accurate, and complete information?

19. CBOC Compliance: Does the Measure-B bond program overall comply with the law, the District's Board Policies, and the oversight committee's bylaws?

20. Transparency of Bond Program: How does the district communicate with the Public, and how effective is the communications? How does the district receive and assimilate the Public's concerns and information expectations? How do these programs compare to practices at other school districts? How transparent is the bond program, overall, in terms of communicating on the Internet website, communicating construction progress, and expenditures? How does the district's communication practices compare to The San Diego Taxpayers Educational Foundation criteria for measuring School Bond Transparency?

* SAVE International® is the premier international society devoted to advancing and promoting the Value Methodology (VM). "To identify and develop value and innovation, both private industry and government agencies have been using a process known as the Value Methodology (VM). Also known as Value Engineering, Value Analysis or Value Management, the VM process can optimize projects, processes and product development in significant ways. Through this process, companies and government agencies regularly decrease costs, increase profits, improve quality and performance, and enhance customer satisfaction."
SAVE International (value-eng.org)

Appendix F - California Constitution Article XIIIA § 1

(This part of the Constitution is the result of the November, 2000, passage of the initiative entitled "School Facilities. 55% Local Vote. Bonds, Taxes. Accountability Requirements. Initiative Constitutional Amendment and Statute.," also known as Proposition 39.)

(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following:

(1) Indebtedness approved by the voters prior to July 1, 1978.

(2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIIIA, Section 1(b) (3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote ad valorem tax pursuant to subdivision (b).

Appendix G - Government Auditing Standards (Yellow Book) 2018 Revision, Technical Update April 2021

Chapter 1: Foundation and Principles for the Use

and Application of Government Auditing Standards

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Financial Audits

1.17 Financial audits provide independent assessments of whether entities' reported financial information (e.g., financial condition, results, and use of resources) is presented fairly, in all material respects, in accordance with recognized criteria. Financial audits conducted in accordance with GAGAS include financial statement audits and other related financial audits.

a. Financial statement audits: The primary purpose of a financial statement audit is to provide financial statement users with an opinion by an auditor on whether an entity's financial statements are presented fairly, in all material respects, in accordance with an applicable financial reporting framework. Reporting on financial statement audits conducted in accordance with GAGAS also includes reports on internal control over financial reporting and on compliance with provisions of laws, regulations, contracts, and grant agreements that have a material effect on the financial statements.

b. Other types of financial audits: Other types of financial audits conducted in accordance with GAGAS entail various scopes of work, including

(1) obtaining sufficient, appropriate evidence to form an opinion on a single financial statement or specified elements, accounts, or line items of a financial statement;

(2) issuing letters (commonly referred to as comfort letters) for underwriters and certain other requesting parties;

(3) auditing applicable compliance and internal control requirements relating to one or more government programs; and

(4) conducting an audit of internal control over financial reporting that is integrated with an audit of financial statements (integrated audit).

Appendix H - GOVERNMENT AUDITING STANDARDS 2018 Revision, Technical Update April 2021

Chapter 1: Foundation and Principles for the Use and Application of Government Auditing Standards

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Performance Audits

1.21 Performance audits provide objective analysis, findings, and conclusions to assist management and those charged with governance and oversight with, among other things, improving program performance and operations, reducing costs, facilitating decision making by parties responsible for overseeing or initiating corrective action, and contributing to public accountability.

1.22 Performance audit objectives vary widely and include assessments of program effectiveness, economy, and efficiency; internal control; compliance; and prospective analyses. Audit objectives may also pertain to the current status or condition of a program. These overall objectives are not mutually exclusive. For example, a performance audit with an objective of determining or evaluating program effectiveness may also involve an additional objective of evaluating the program's internal controls.

Key categories of performance audit objectives include the following:

a. Program effectiveness and results audit objectives. These are frequently interrelated with economy and efficiency objectives. Audit objectives that focus on program effectiveness and results typically measure the extent to which a program is achieving its goals and objectives. Audit objectives that focus on economy and efficiency address the costs and resources used to achieve program results.

b. Internal control audit objectives. These relate to an assessment of one or more aspects of an entity's system of internal control that is designed to provide reasonable assurance of achieving effective and efficient operations, reliability of reporting for internal and external use, or compliance with provisions of applicable laws and regulations. Internal control objectives also may be relevant when determining the cause of unsatisfactory program performance. Internal control is a process effected by an entity's oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved. Internal control comprises the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity.

c. Compliance audit objectives. These relate to an assessment of compliance with criteria established by provisions of laws, regulations, contracts, and grant agreements, or other requirements that could affect the acquisition, protection, use, and disposition of the entity's resources and the quantity, quality, timeliness, and cost of services the entity produces and delivers. Compliance requirements can be either financial or nonfinancial.

d. Prospective analysis audit objectives. These provide analysis or conclusions about information that is based on assumptions about events that may occur in the future, along with possible actions that the entity may take in response to the future events.

Appendix I - Education Code: Corrupt Practices Sections

EDUCATION CODE – TITLE 2. ELEMENTARY AND SECONDARY EDUCATION
DIVISION 3. LOCAL ADMINISTRATION
PART 21. LOCAL EDUCATIONAL AGENCIES
CHAPTER 2. Governing Boards *(Chapter 2 enacted by Stats. 1976, Ch. 1010.)*

ARTICLE 7. Corrupt Practices

35230.
The offering of any valuable thing to any member of the governing board of any school district, with the intent to influence his action in regard to the granting of any teacher's certificate, the appointment of any teacher, superintendent, or other officer or employee, the adoption of any textbook, or the making of any contract to which the board of which he is a member is a party, or the acceptance by any member of the governing board of any valuable thing, with corrupt intent, is a misdemeanor.
(Enacted by Stats. 1976, Ch. 1010.)

35231.
Any contract or appointment obtained from the governing board of any school district by corrupt means is void. *(Enacted by Stats. 1976, Ch. 1010.)*

35232.
Any person may be compelled to testify in any lawful investigation or judicial proceeding against any Eperson who is charged with any offense described in Sections 35230 or 35231.
(Enacted by Stats. 1976, Ch. 1010.)

35233.
The prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code are applicable to members of governing boards of school districts and to members of citizens' oversight committees appointed by those governing boards pursuant to Chapter 1.5 (commencing with Section 15264) of Part 10.
(Amended by Stats. 2000, Ch. 44, Sec. 4. Effective January 1, 2001.)

35239.
(a) In a school district which during the preceding fiscal year had an average daily attendance of 70 or less, a member of the governing board may receive a reasonable compensation from the district for necessary work and labor performed by him or her for the district in repairing the schoolhouse, fences, and other property belonging to the district, or in furnishing wood or other necessary supplies.
(b) In a school district which during the preceding fiscal year had an average daily attendance of 70 or less, a member of the governing board may receive a reasonable compensation from the district for providing services in a classified position if the collective bargaining agent for classified employees in that district and the governing board concur that no other qualified person is available.
(c) The requisition drawn pursuant to subdivision (a) or (b) for payment for services or supplies shall be signed by the other members of the governing board and shall be subject to approval by the county superintendent of schools. *(Amended by Stats. 1987, Ch. 56, Sec. 39.)*

35240.
Any contract made in violation of Section 35239 is void.

(Amended by Stats. 1985, Ch. 816, Sec. 8.)

EDUCATION CODE - TITLE 3. POSTSECONDARY EDUCATION
DIVISION 7. COMMUNITY COLLEGES
PART 45. DISTRICTS AND GOVERNING BOARDS
CHAPTER 5. Liabilities, Insurance, and Corrupt Practices
(Chapter 5 enacted by Stats. 1976, Ch. 1010.)

ARTICLE 2. Corrupt Practices

72530.
(a) The offering of any valuable thing to any member of the governing board of any community college district, with the intent to influence his or her action in regard to the granting of any instructor's certificate, the appointment of any instructor, superintendent, or other officer or employee, the adoption of any textbook, or the making of any contract to which the board of which he or she is a member is a party, or the acceptance by any member of the governing board of any valuable thing, with corrupt intent, is a misdemeanor.
(b) Any contract or appointment obtained from the governing board of any community college district by corrupt means is void. *(Amended by Stats. 1990, Ch. 1372, Sec. 348.)*

72533.
The prohibitions contained in Article 4 (commencing with Section 1090) and Article 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code are applicable to members of governing boards of community college districts and to members of citizens' oversight committees appointed by those governing boards pursuant to Chapter 1.5 (commencing with Section 15264) of Part 10. *(Amended by Stats. 2000, Ch. 44, Sec. 5. Effective January 1, 2001.)*

Appendix J - Government Code: School District Prohibited Activities

GOVERNMENT CODE - GOV
TITLE 1. GENERAL
DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 1. General
(Chapter 1 enacted by Stats. 1943, Ch.134)

ARTICLE 4. Prohibitions Applicable to Specified Officers

1090.
(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.
(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).
(c) As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.
(Amended by Stats. 2014, Ch. 483, Sec. 1. (SB 952) Effective January 1, 2015.)

1090.1.
No officer or employee of the State nor any Member of the Legislature shall accept any commission for the placement of insurance on behalf of the State.
(Added by Stats. 1957, Ch. 812.)

1091.
(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.
(b) As used in this article, "remote interest" means any of the following:
(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)), pursuant to Section 501(c)(5) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(5)), or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.
(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.
For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be

counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.
(3) That of an employee or agent of the contracting party, if all of the following conditions are met:
(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.
(B) The contract is competitively bid and is not for personal services.
(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.
(D) The contracting party has 10 or more other employees.
(E) The employee or agent did not directly participate in formulating the bid of the contracting party.
(F) The contracting party is the lowest responsible bidder.
(4) That of a parent in the earnings of his or her minor child for personal services.
(5) That of a landlord or tenant of the contracting party.
(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.
(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.
(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.
(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of, or a person having an ownership interest of, 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.
(11) That of an engineer, geologist, architect, or planner employed by a consulting engineering, architectural, or planning firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.
(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42 U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.
(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.
(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.
(15) That of a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

(A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.
(B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.
(C) The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board.
(16) That of a person who is an officer or employee of an investor-owned utility that is regulated by the Public Utilities Commission with respect to a contract between the investor-owned utility and a state, county, district, judicial district, or city body or board of which the person is a member, if the contract requires the investor-owned utility to provide energy efficiency rebates or other type of program to encourage energy efficiency that benefits the public when all of the following apply:
(A) The contract is funded by utility consumers pursuant to regulations of the Public Utilities Commission.
(B) The contract provides no individual benefit to the person that is not also provided to the public, and the investor-owned utility receives no direct financial profit from the contract.
(C) The person has recused himself or herself from all participation in making the contract on behalf of the state, county, district, judicial district, or city body or board of which he or she is a member.
(D) The contract implements a program authorized by the Public Utilities Commission.
(17) That of an owner or partner of a firm serving as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from providing any advice to the contracting agency regarding the contract between the firm and the contracting agency and from all participation in reviewing a project that results from that contract.
(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.
(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.
(Amended by Stats. 2015, Ch. 495, Sec. 1. (SB 704) Effective January 1, 2016.)

1091.1.
The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions; provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever.
(Amended by Stats. 1975, Ch. 24.)

1091.2.
Section 1090 shall not apply to any contract or grant made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998 except where both of the following conditions are met:
(a) The contract or grant directly relates to services to be provided by any member of a local workforce investment board or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.
(Amended by Stats. 2000, Ch. 108, Sec. 3. Effective July 10, 2000.)

1091.3.
Section 1090 shall not apply to any contract or grant made by a county children and families commission created pursuant to the California Children and Families Act of 1998 (Division 108 (commencing with Section 130100) of the Health and Safety Code), except where both of the following conditions are met:
(a) The contract or grant directly relates to services to be provided by any member of a county children and families commission or the entity the member represents or financially benefits the member or the entity he or she represents.
(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.
(Amended by Stats. 2002, Ch. 664, Sec. 88. Effective January 1, 2003.)

1091.4.
(a) As used in Section 1091, "remote interest" also includes a person who has a financial interest in a contract, if all of the following conditions are met:
(1) The agency of which the person is a board member is a special district serving a population of less than 5,000 that is a landowner voter district, as defined in Section 56050, that does not distribute water for any domestic use.
(2) The contract is for either of the following:
(A) The maintenance or repair of the district's property or facilities provided that the need for maintenance or repair services has been widely advertised. The contract will result in materially less expense to the district than the expense that would have resulted under reasonably available alternatives and review of those alternatives is documented in records available for public inspection.
(B) The acquisition of property that the governing board of the district has determined is necessary for the district to carry out its functions at a price not exceeding the value of the property, as determined in a record available for public inspection by an appraiser who is a member of a recognized organization of appraisers.
(3) The person did not participate in the formulation of the contract on behalf of the district.
(4) At a public meeting, the governing body of the district, after review of written documentation, determines that the property acquisition or maintenance and repair services cannot otherwise be obtained at a reasonable price and that the contract is in the best interests of the district, and adopts a resolution stating why the contract is necessary and in the best interests of the district.
(b) If a party to any proceeding challenges any fact or matter required by paragraph (2), (3), or (4) of subdivision (a) to qualify as a remote interest under subdivision (a), the district shall bear the burden of proving this fact or matter.
(Amended by Stats. 2004, Ch. 183, Sec. 132. Effective January 1, 2005.)

1091.5.
(a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:
(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duties.
(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the body or board.
(4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.
(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.
(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.
(7) That of a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records.
(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records. For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.
(9) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.
(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.
(11) Except as provided in subdivision (b), that of an officer or employee of, or a person having less than a 10-percent ownership interest in, a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower, depositor, debtor, or creditor.
(12) That of (A) a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, "agreement" includes contracts and grants, and "park," "natural lands," and "historical resources" shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the public agency

may include those studies and related services, acquisitions of property and property interests, and any activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.
(13) That of an officer, employee, or member of the Board of Directors of the California Housing Finance Agency with respect to a loan product or programs if the officer, employee, or member participated in the planning, discussions, development, or approval of the loan product or program and both of the following two conditions exist:
(A) The loan product or program is or may be originated by any lender approved by the agency.
(B) The loan product or program is generally available to qualifying borrowers on terms and conditions that are substantially the same for all qualifying borrowers at the time the loan is made.
(14) That of a party to a contract for public services entered into by a special district that requires a person to be a landowner or a representative of a landowner to serve on the board of which the officer or employee is a member, on the same terms and conditions as if he or she were not a member of the body or board. For purposes of this paragraph, "public services" includes the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.
(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.
(Amended by Stats. 2013, Ch. 650, Sec. 1. (AB 1090) Effective January 1, 2014.)

1091.6.
An officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain shall not vote on any matter affecting that organization.
(Added by Stats. 2006, Ch. 594, Sec. 9. Effective January 1, 2007.)

1092.
(a) Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless the contract is made in the official capacity of the officer, or by a board or body of which he or she is a member.
(b) An action under this section shall be commenced within four years after the plaintiff has discovered, or in the exercise of reasonable care should have discovered, a violation described in subdivision (a).
(Amended by Stats. 2007, Ch. 68, Sec. 1. Effective January 1, 2008.)

1092.5.
Notwithstanding Section 1092, no lease or purchase of, or encumbrance on, real property may be avoided, under the terms of Section 1092, in derogation of the interest of a good faith lessee, purchaser, or encumbrancer where the lessee, purchaser, or encumbrancer paid value and acquired the interest without actual knowledge of a violation of any of the provisions of Section 1090.
(Added by Stats. 1981, Ch. 66, Sec. 1.)

1093.
(a) The Treasurer and Controller, county and city officers, and their deputies and clerks shall not purchase or sell, or in any manner receive for their own or any other person's use or benefit any state, county or

city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state, or any county or city thereof.
(b) An individual shall not aid or abet the Treasurer, Controller, a county or city officer, or their deputy or clerk in violating subdivision (a).
(c) This section shall not apply to evidences of indebtedness issued to or held by an officer, deputy, or clerk for services rendered by them, nor to evidences of the funded indebtedness of the state, county, or city. *(Amended by Stats. 2014, Ch. 483, Sec. 2. (SB 952) Effective January 1, 2015.)*

1094.
Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such officers to make and file with him an affidavit or certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who wilfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State. *(Amended by Stats. 1951, Ch. 385.)*

1095.
Officers charged with the disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article. *(Enacted by Stats. 1943, Ch. 134.)*

1096.
Upon the officer charged with the disbursement of public moneys being informed by affidavit that any officer, whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, the disbursing officer shall suspend such settlement or payment, and cause the district attorney to prosecute the officer for such violation. If judgment is rendered for the defendant upon such prosecution, the disbursing officer may proceed to settle, audit, or pay the account as if no affidavit had been filed. *(Enacted by Stats. 1943, Ch. 134.)*

1097.
(a) Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of those laws, is punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.
(b) An individual who willfully aids or abets an officer or person in violating a prohibition by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, is punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.
(Amended by Stats. 2014, Ch. 483, Sec. 3. (SB 952) Effective January 1, 2015.)

1097.1.
(a) The Commission shall have the jurisdiction to commence an administrative action, or a civil action, as set forth within the limitations of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5, against an officer or person prohibited by Section 1090 from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing scrip, or other evidences of indebtedness, including any member of the governing board of a school district, who violates any provision of those laws or who causes any other person to violate any provision of those laws.

(b) The Commission shall not have jurisdiction to commence an administrative or civil action or an investigation that might lead to an administrative or civil action pursuant to subdivision (a) against a person except upon written authorization from the district attorney of the county in which the alleged violation occurred. A civil action alleging a violation of Section 1090 shall not be filed against a person pursuant to this section if the Attorney General or a district attorney is pursuing a criminal prosecution of that person pursuant to Section 1097.
(c) (1) The Commission's duties and authority under the Political Reform Act of 1974 (Title 9 (commencing with Section 81000)) to issue opinions or advice shall not be applicable to Sections 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, 1091.5, 1091.6, or 1097, except as provided in this subdivision.
(2) A person subject to Section 1090 may request the Commission to issue an opinion or advice with respect to his or her duties under Section 1090, 1091, 1091.1, 1091.2, 1091.3, 1091.4, 1091.5, and 1091.6. The Commission shall decline to issue an opinion or advice relating to past conduct.
(3) The Commission shall forward a copy of the request for an opinion or advice to the Attorney General's office and the local district attorney prior to proceeding with the advice or opinion.
(4) When issuing the advice or opinion, the Commission shall either provide to the person who made the request a copy of any written communications submitted by the Attorney General or a local district attorney regarding the opinion or advice, or shall advise the person that no written communications were submitted. The failure of the Attorney General or a local district attorney to submit a written communication pursuant to this paragraph shall not give rise to an inference that the Attorney General or local district attorney agrees with the opinion or advice.
(5) The opinion or advice, when issued, may be offered as evidence of good faith conduct by the requester in an enforcement proceeding, if the requester truthfully disclosed all material facts and committed the acts complained of in reliance on the opinion or advice. Any opinion or advice of the Commission issued pursuant to this subdivision shall not be admissible by any person other than the requester in any proceeding other than a proceeding brought by the Commission pursuant to this section. The Commission shall include in any opinion or advice that it issues pursuant to this subdivision a statement that the opinion or advice is not admissible in a criminal proceeding against any individual other than the requester.
(d) A decision issued by the Commission pursuant to an administrative action commenced pursuant to the jurisdiction established in subdivision (a) shall not be admissible in any proceeding other than a proceeding brought by the Commission pursuant to this section. The Commission shall include in any decision it issues pursuant to an administrative action commenced pursuant to the jurisdiction established in subdivision (a) a statement that the decision applies only to proceedings brought by the Commission.
(e) The Commission may adopt, amend, and rescind regulations to govern the procedures of the Commission consistent with the requirements of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5. These regulations shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2).
(f) For purposes of this section and Sections 1097.2, 1097.3, 1097.4, and 1097.5, "Commission" means the Fair Political Practices Commission.
(Amended by Stats. 2014, Ch. 71, Sec. 67. (SB 1304) Effective January 1, 2015.)

1097.2.
(a) Upon the sworn complaint of a person or on its own initiative, the Commission shall investigate possible violations of Section 1090, as provided in Section 1097.1. After complying with subdivision (b) of Section 1097.1, the Commission shall provide a written notification to the person filing a complaint in the manner described in Section 83115.
(b) The Commission shall not make a finding of probable cause to believe Section 1090 has been violated unless the Commission has notified the person who is alleged to have violated Section 1090 in the manner described in Section 83115.5.

(c) If the Commission determines there is probable cause to believe Section 1090 has been violated, it may hold a hearing to determine if a violation has occurred, subject to the requirements of subdivision (b) of Section 1097.1 and in the manner described in Section 83116.
(d) If the Commission rejects the decision of an administrative law judge made pursuant to Section 11517, the Commission shall state the reasons in writing for rejecting the decision, as required by Section 83116.3.
(e) The Commission shall have all of the subpoena powers provided in Section 83118 to assist in the performance of the Commission's duties under this section.
(f) The Commission may refuse to excuse any person from testifying, or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the Commission notwithstanding an objection that the testimony or evidence required of the person may tend to incriminate the person. A person who is compelled, after having claimed the privilege against self-incrimination, to testify or produce testimonial evidence, shall not have that testimony or the testimonial evidence the person produced used against that person in a separate and subsequent prosecution. However, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The Commission shall not compel any person to testify or produce testimonial evidence after the person has claimed the privilege against self-incrimination unless the Commission has obtained written authorization from the Attorney General and the district attorney of the county in which the alleged violation occurred.
(g) The Commission shall not commence an administrative action pursuant to this section against a person who is subject to Section 1090 alleging a violation of that section if the Commission has commenced a civil action pursuant to Section 1097.3 against that person for the same violation. For purposes of this subdivision, the commencement of the administrative action shall be the date of the service of the probable cause hearing notice, as required by subdivision (b), upon the person alleged to have violated Section 1090.
(h) An administrative action brought pursuant to this section shall be subject to the requirements of Section 91000.5. *(Added by Stats. 2013, Ch. 650, Sec. 3. (AB 1090) Effective January 1, 2014.)*

1097.3.
(a) Subject to the requirements of Section 1097.1, the Commission may file a civil action for an alleged violation of Section 1090. A person held liable for such a violation shall be subject to a civil fine payable to the Commission for deposit in the General Fund of the state in an amount not to exceed the greater of ten thousand dollars ($10,000) or three times the value of the financial benefit received by the defendant for each violation.
(b) The Commission shall not commence a civil action pursuant to this section alleging a violation of Section 1090 if the Commission has commenced an administrative action pursuant to Section 1097.1 against the person for the same violation.
(c) A civil action brought by the Commission pursuant to this section shall not be filed more than four years after the date the violation occurred. *(Added by Stats. 2013, Ch. 650, Sec. 4. (AB 1090) Effective January 1, 2014.)*

1097.4.
In addition to any other remedies available, the Commission may obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to Section 1097.1, 1097.2, or 1097.3. Penalties shall be collected in accordance with Section 91013.5. *(Added by Stats. 2013, Ch. 650, Sec. 5. (AB 1090) Effective January 1, 2014.)*

1097.5.
(a) If the time for judicial review of a final Commission order or decision issued pursuant to Section 1097.2 has lapsed, or if all means of judicial review of the order or decision have been exhausted, the

Commission may apply to the clerk of the superior court for a judgment to collect the penalties imposed by the order or decision, or the order as modified in accordance with a decision on judicial review.
(1) The application, which shall include a certified copy of the order or decision, or the order as modified in accordance with a decision on judicial review, and proof of service of the order or decision, constitutes a sufficient showing to warrant issuance of the judgment to collect the penalties. The clerk of the court shall enter the judgment immediately in conformity with the application.
(2) An application made pursuant to this section shall be made to the clerk of the superior court in the county where the monetary penalties, fees, or civil penalties were imposed by the Commission.
(3) A judgment entered in accordance with this section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action and may be enforced in the same manner as any other judgment of the court in which it is entered.
(4) The Commission may bring an application pursuant to this section only within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.
(b) The remedy available under this section is in addition to those available under Section 1097.4 or any other law.
(Added by Stats. 2013, Ch. 650, Sec. 6. (AB 1090) Effective January 1, 2014.)

1098.
(a) Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.
(b) As used in this section:
(1) "Confidential information" means information to which all of the following apply:
(A) At the time of the use or disclosure of the information, the information is not a public record subject to disclosure under the Public Records Act.
(B) At the time of the use or disclosure of the information, the disclosure is prohibited by (i) a statute, regulation, or rule which applies to the agency in which the officer or employee serves; (ii) the statement of incompatible activities adopted pursuant to Section 19990 by the agency in which the officer or employee serves; or (iii) a provision in a document similar to a statement of incompatible activities if the agency in which the officer or employee serves is a local agency.
(C) The use or disclosure of the information will have, or could reasonably be expected to have, a material financial effect on any investment or interest in real property which the officer or employee, or any person who provides pecuniary gain to the officer or employee in return for the information, has at the time of the use or disclosure of the information or acquires within 90 days following the use or disclosure of the information.
(2) For purposes of paragraph (1):
(A) "Interest in real property" has the definition prescribed by Section 82033.
(B) "Investment" has the definition prescribed by Section 82034.
(C) "Material financial effect" has the definition prescribed by Sections 18702 and 18702.2 of Title 2 of the California Administrative Code, as those sections read on September 1, 1987.
(3) "Pecuniary gain" does not include salary or other similar compensation from the officer's or the employee's agency.
(c) This section shall not apply to any disclosure made to any law enforcement agency, nor to any disclosure made pursuant to Sections 10542 and 10543.
(d) This section is not intended to supersede, amend, or add to subdivision (b) of Section 8920 regarding prohibited conduct of Members of the Legislature. *(Added by Stats. 1987, Ch. 962, Sec. 1.)*

1099.
(a) A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are

incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:
(1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.
(2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.
(3) Public policy considerations make it improper for one person to hold both offices.
(b) When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to Section 803 of the Code of Civil Procedure.
(c) This section does not apply to a position of employment, including a civil service position.
(d) This section shall not apply to a governmental body that has only advisory powers.
(e) For purposes of paragraph (1) of subdivision (a), a member of a multimember body holds an office that may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over another office when the body has any of these powers over the other office or over a multimember body that includes that other office.
(f) This section codifies the common law rule prohibiting an individual from holding incompatible public offices.
(Added by Stats. 2005, Ch. 254, Sec. 1. Effective January 1, 2006.)

Appendix K - Penal Code: Bribery, Forgery, and Submitting False Documents

Bribery

PENAL CODE - PART 1. OF CRIMES AND PUNISHMENTS

TITLE 6. OF CRIMES AGAINST THE LEGISLATIVE POWER [85 - 88] (*Title 6 enacted 1872)*

85. Every person who gives or offers to give a bribe to any Member of the Legislature, any member of the legislative body of a city, county, city and county, school district, or other special district, or to another person for the member, or attempts by menace, deceit, suppression of truth, or any corrupt means, to influence a member in giving or withholding his or her vote, or in not attending the house or any committee of which he or she is a member, is punishable by imprisonment in the state prison for two, three or four years. *(Amended by Stats. 2006, Ch. 435, Sec. 1. Effective September 24, 2006.)*

86. Every Member of either house of the Legislature, or any member of the legislative body of a city, county, city and county, school district, or other special district, who asks, receives, or agrees to receive, any bribe, upon any understanding that his or her official vote, opinion, judgment, or action shall be influenced thereby, or shall give, in any particular manner, or upon any particular side of any question or matter upon which he or she may be required to act in his or her official capacity, or gives, or offers or promises to give, any official vote in consideration that another Member of the Legislature, or another member of the legislative body of a city, county, city and county, school district, or other special district shall give this vote either upon the same or another question, is punishable by imprisonment in the state prison for two, three, or four years and, in cases in which no bribe has been actually received, by a restitution fine of not less than four thousand dollars ($4,000) or not more than twenty thousand dollars ($20,000) or, in cases in which a bribe was actually received, by a restitution fine of at least the actual amount of the bribe received or four thousand dollars ($4,000), whichever is greater, or any larger amount of not more than double the amount of any bribe received or twenty thousand dollars ($20,000), whichever is greater.
In imposing a fine under this section, the court shall consider the defendant's ability to pay the fine. *(Amended by Stats. 2014, Ch. 881, Sec. 2. (AB 1666) Effective January 1, 2015.)*

88. Every Member of the Legislature, and every member of a legislative body of a city, county, city and county, school district, or other special district convicted of any crime defined in this title, in addition to the punishment prescribed, forfeits his or her office and is forever disqualified from holding any office in this state or a political subdivision thereof. *(Amended by Stats. 2006, Ch. 435, Sec. 3. Effective September 24, 2006.)*

Forgery and Submitting False Documents

PENAL CODE - PART 1. OF CRIMES AND PUNISHMENTS
TITLE 7. OF CRIMES AGAINST PUBLIC JUSTICE
CHAPTER 4. Forging, Stealing, Mutilating, and Falsifying Judicial and Public Records and Documents *(Chapter 4 enacted 1872.)*

115. (a) Every person who knowingly procures or offers any false or forged instrument to be filed,

registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony.
(b) Each instrument which is procured or offered to be filed, registered, or recorded in violation of subdivision (a) shall constitute a separate violation of this section.
(c) Except in unusual cases where the interests of justice would best be served if probation is granted, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any of the following persons:
(1) Any person with a prior conviction under this section who is again convicted of a violation of this section in a separate proceeding.
(2) Any person who is convicted of more than one violation of this section in a single proceeding, with intent to defraud another, and where the violations resulted in a cumulative financial loss exceeding one hundred thousand dollars ($100,000).
(d) For purposes of prosecution under this section, each act of procurement or of offering a false or forged instrument to be filed, registered, or recorded shall be considered a separately punishable offense.
(e) (1) After a person is convicted of a violation of this section, or a plea is entered whereby a charge alleging a violation of this section is dismissed and waiver is obtained pursuant to People v. Harvey (1979) 25 Cal.3d 754, upon written motion of the prosecuting agency, the court, after a hearing described in subdivision (f), shall issue a written order that the false or forged instrument be adjudged void ab initio if the court determines that an order is appropriate under applicable law. The order shall state whether the instrument is false or forged, or both false and forged, and describe the nature of the falsity or forgery. A copy of the instrument shall be attached to the order at the time it is issued by the court and a certified copy of the order shall be filed, registered, or recorded at the appropriate public office by the prosecuting agency.
(2) (A) If the order pertains to a false or forged instrument that has been recorded with a county recorder, an order made pursuant to this section shall be recorded in the county where the affected real property is located. The order shall also reference the county recorder's document recording number of any notice of pendency of action recorded pursuant to paragraph (2) of subdivision (f).
(B) As to any order, notice of pendency of action, or withdrawal of notice of pendency of action recorded pursuant to this section, recording fees shall be waived pursuant to Section 27383 of the Government Code.
(f) A prosecuting agency shall use the following procedures in filing a motion under subdivision (e):
(1) Within 10 calendar days of filing a criminal complaint or indictment alleging a violation of this section, the prosecuting agency shall provide written notice by certified mail to all parties who have an interest in the property affected by the false or forged instrument, or in the instrument itself, including those described in paragraph (5).
(2) (A) Within 10 calendar days of filing a criminal complaint or indictment alleging a violation of this section, the prosecuting agency shall record a notice of pendency of action in the county in which the affected real property is located.
(B) Within 10 calendar days of the case being adjudicated or dismissed without obtaining an order pursuant to subdivision (e), the prosecuting agency shall record a withdrawal of the notice of pendency of action in the county where the affected real property is located.
(3) The written notice and notice of pendency of action described in paragraphs (1) and (2) shall inform the interested parties that a criminal action has commenced that may result in adjudications against the false or forged instrument or the property affected by the false or forged instrument, and shall notify the interested parties of their right to be heard if a motion is brought under subdivision (e) to void the false or forged instrument. The notice shall state the street address, if available, and the legal description of the affected real property.
(4) Failure of the prosecuting agency to provide written notice or record a pendency of action as required under paragraphs (1) and (2) within 10 calendar days shall not prevent the prosecuting agency from later making a motion under subdivision (e), but the court shall take the failure to provide notice or record a pendency of action as required under paragraphs (1) and (2) as reason to provide any interested parties

additional time to respond to the motion. Failure of the prosecuting agency to so notify interested parties under this subdivision or record a pendency of action as required under paragraphs (1) and (2) within 10 calendar days shall create a presumption that a finding as described in paragraph (9) is necessary to protect the property rights of the interested party or parties.
(5) If the instrument sought to be declared void involves real property, "interested parties" include, but are not limited to, all parties who have recorded with the county recorder in the county where the affected property is located any of the following: a deed, lien, mortgage, deed of trust, security interest, lease, or other instrument declaring an interest in, or requesting notice relating to, the property affected by the false or forged instrument as of the date of the filing of the criminal complaint or indictment.
(6) Any party not required to be noticed under paragraph (1) or (5) who nonetheless notifies the prosecuting agency in writing of the party's desire to be notified if a motion is brought under subdivision (e) to void the false or forged instrument shall be treated as an interested party as defined in paragraph (1) or (5).
(7) The court shall set a hearing for the motion brought by the prosecuting agency under subdivision (e) no earlier than 90 calendar days from the date the motion is made. The prosecuting agency shall provide a copy by certified mail of the written motion and a notice of hearing to all interested parties described in paragraphs (1), (5), or (6), and all other persons who obtain an interest in the property prior to recordation of notice of pendency of action no later than 90 days before the hearing date set by the court. The notice shall state the street address, if available, and the legal description of the affected real property.
(8) At a hearing on a motion brought by the prosecuting agency under subdivision (e), the defendant, prosecuting agency, and interested parties described in paragraphs (1), (5), or (6), shall have a right to be heard and present information to the court. No party shall be denied a right to present information due to a lack of notice by the prosecuting agency or failure to contact the prosecuting agency or the court prior to the hearing.
(9) (A) At a hearing on a motion brought by a prosecuting agency under subdivision (e), if the court determines that the interests of justice or the need to protect the property rights of any person or party so requires, including, but not limited to, a finding that the matter may be more appropriately determined in a civil proceeding, the court may decline to make a determination under subdivision (e).
(B) If, prior to the hearing on the motion, any person or party files a quiet title action that seeks a judicial determination of the validity of the same false or forged instrument that is the subject of the motion, or the status of an interested party as a bona fide purchaser of, or bona fide holder of an encumbrance on, the property affected by the false or forged instrument, the court may consider that as an additional but not dispositive factor in making its determination under subdivision (e); provided, however, that a final judgment previously entered in that quiet title action shall be followed to the extent otherwise required by law. (g) As used in this section, "prosecuting agency" means a city attorney, a district attorney, the Attorney General, or other state or local agency actively prosecuting a case under this section.
(h) An order made pursuant to subdivision (e) shall be considered a judgment, and subject to appeal in accordance with, paragraph (1) of subdivision (a) of Section 904.1 of the Code of Civil Procedure.
(Amended by Stats. 2014, Ch. 455, Sec. 1. (AB 1698) Effective January 1, 2015.)

115.3. Any person who alters a certified copy of an official record, or knowingly furnishes an altered certified copy of an official record, of this state, including the executive, legislative, and judicial branches thereof, or of any city, county, city and county, district, or political subdivision thereof, is guilty of a misdemeanor. *(Added by Stats. 1984, Ch. 874, Sec. 1. Effective September 5, 1984.)*

About Bryan Scott

Bryan Scott serves on the Measure-B Citizens' Oversight Committee of the Brentwood Union School District, in Brentwood, California. Measure-B is a Proposition 39 bond measure passed in 2016, authorizing $158 million of school construction bonds. He is an active participant and volunteer with the California Association of Bond Oversight Committees (CABOC) and was named the CABOC Member of the Year in 2023. He is also a member of the Contra Costa Taxpayer Association (CoCoTax).

From 2015 to 2021 he advocated for improved fire and emergency medical services for 249-square miles of eastern Contra Costa County, forming East County Voters for Equal Protection, a community group that made over 40 formal presentations to public agencies, civic and social groups, attended and participated in over 65 meetings with elected, employed, or appointed government officials, conducted 15 public committee meetings, wrote over 300 articles and opinion pieces published in local traditional periodicals, online, and in social media. In 2021 local government announced plans to double the number of fire stations in the region, from three to six, and to add paramedic-level EMS staffing to all fire engines.

In 2014 and 2015 Scott helped found the Brentwood Library Foundation, a 501c3 nonprofit entity advocating with city leaders to build a new library, and he served on the Contra Costa County Library Commission. In the Fall of 2015, the City of Brentwood announced plans to construct a $14 million library. The new Brentwood library opened in September, 2018.

For the prior thirty years Scott operated his own boutique executive search firm, assisting computer industry clients to locate and hire senior technical and managerial employees. Previously he served as a technical training manager and consultant, developing task-based training programs for major manufacturing and distribution clients across North America. He also worked as a newspaper reporter, photographer and Sports Editor, and earned a Bachelor's degree in Political Science and Journalism, with honors, from San Francisco State University.

Effective bond oversight requires each citizens' bond oversight committee (CBOC) member to not only inquire and interpret, but understand and then execute the roles and responsibilities of the CBOC, in accordance with the intent set forth in the "Strict Accountability in Local School Construction Bonds Act of 2000." In order to accomplish the above goals, training and reference materials are essential for the CBOC to be successful.

I am proud to be part of the Brentwood Union School District (BUSD) Measure-B CBOC for 2022/2023, and pleased that BUSD administration has consistently supported our training needs. The CBOC thoroughly evaluated, and unanimously approved this manual (***Becoming an Effective Watchdog***) as a reference guide, for the benefit of all committee members.

Copies of this reference manual are provided at cost to BUSD for members of the Measure-B CBOC. The author receives no financial benefit.

Javed (JD) Khan,
CBOC Chair 2022/2023